

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Commonwealth Securities Limited [2022] FCA 1253

File number(s): NSD 150 of 2021

Judgment of: **ABRAHAM J**

Date of judgment: 25 October 2022

Catchwords: **BANKING AND FINANCIAL INSTITUTIONS** – proceeding for civil contraventions of *Corporations Act 2001* (Cth) and *Australian Securities and Investments Commission 2001* (Cth) – whether appropriate for court to make declarations of contravention, impose civil penalties and order defendants to implement a compliance plan – where conduct serious and unacceptable and where defendants have previously faced proceedings before the Market Disciplinary Panel – where defendants cooperated with regulator, remediated harm caused to customers, expressed contrition and have taken steps and made investments to improve future compliance – where parties agree on proposed relief – where parties agree that a discount from headline penalty is appropriate – where court satisfied that agreed penalty is appropriate having regard to all relevant matters

Legislation: *Corporations Act 2001* (Cth) ss 798G, 798H, 912A, 912C, 1101B 1317E and 1317G
Australian Securities and Investments Commission 2001 (Cth) ss 12DB, 12GBA, 93AA and 102
Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth) s 48
Federal Court of Australia Act 1976 (Cth) s 21B
Banking Act 1959 (Cth) s 5
Corporations Regulations 2001 (Cth) r 7.2A.10

Cases cited: *ASIC v National Australia Bank Limited* [2020] FCA 1494
ASIC v Pegasus Leverages Options Group Pty Ltd [2002] NSWSC 310; (2002) 41 ACSR 561
ASIC v Westpac Banking Corporation (No 3) [2018] FCA 1701; (2018) 131 ACSR 585
ASIC v Westpac Securities [2019] FCAFC 187; (2019) 272 FCR 170
Australian Building and Construction Commission v

Pattinson [2022] HCA 13; (2022) 399 ALR 599

Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2) [2016] FCA 698

Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd [2016] FCAFC 181; (2016) 340 ALR 25

Australian Competition and Consumer Commission v Yazaki Corporation [2018] FCAFC 73; (2018) 262 FCR 243

Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3) [2020] FCA 208; (2020) 275 FCR 57

Australian Securities and Investments Commission v Avestra Asset Management Limited (in liq) [2017] FCA 497; (2017) 348 ALR 525

Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq) [2012] FCA 414; (2012) 88 ACSR 206

Australian Securities and Investments Commission v Cassimatis (No 8) [2016] FCA 1023; (2016) 336 ALR 209

Australian Securities and Investments Commission v Commonwealth Bank of Australia [2020] FCA 790

Australian Securities and Investments Commission v Fisher & Paykel Customer Services Pty Ltd [2014] FCA 1393

Australian Securities and Investments Commission v Gallop International Group Pty Ltd [2019] FCA 1514; (2019) 138 ACSR 395

Australian Securities and Investments Commission v MLC Nominees Pty Ltd [2020] FCA 1306; (2020) 147 ACSR 266

Australian Securities and Investments Commission v Monarch FX Group Pty Ltd [2014] FCA 1387; 103 ACSR 453

Australian Securities and Investments Commission v Stone Assets Management Pty Ltd [2012] FCA 630; (2012) 205 FCR 120

Australian Securities and Investments Commission v Warrenmang [2007] FCA 973; (2007) 63 ACSR 623

Australian Securities and Investments Commission v Westpac Banking Corporation (No 2) [2018] FCA 751; (2018) 266 FCR 147

Construction, Forestry, Mining and Energy Union v Cahill [2010] FCAFC 39; (2010) 269 ALR 1

Fair Work, NW Frozen Foods Pty Ltd v Australian Competition Commission [1996] FCA 1134; (1996) 71 FCR 285

Minister for Industry, Tourism and Resources v Mobil Oil Australia Pty Ltd [2004] FCAFC 72; (2004) ATPR 41-993
Seven Network Ltd v News Ltd [2009] FCAFC 166; (2009) 182 FCR 160

Singtel Optus Pty Ltd v Australian Competition and Consumer Commission [2012] FCAFC 20; (2012) 287 ALR 249

Story v National Companies and Securities Commission (1988) 13 NSWLR 661

Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission [2021] FCAFC 49; (2021) 284 FCR 24

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: Regulator and Consumer Protection

Number of paragraphs: 122

Date of hearing: 3 March 2022

Counsel for the Plaintiff: Dr S Pritchard SC and Mr R Davies

Solicitor for the Plaintiff: Australian Securities & Investments Commission

Counsel for the Defendants: Ms E Collins SC, Mr P Kulevski and Mr B Hancock

Solicitor for the Defendants: Clayton Utz

ORDERS

NSD 150 of 2021

BETWEEN: **AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**
Plaintiff

AND: **COMMONWEALTH SECURITIES LIMITED ACN 067 254
399**
First Defendant

**AUSTRALIAN INVESTMENT EXCHANGE LIMITED ACN
076 515 930**
Second Defendant

ORDER MADE BY: ABRAHAM J

DATE OF ORDER: 25 OCTOBER 2022

DEFINITIONS:

In these orders the following terms mean:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

ASX Rules means the *ASIC Market Integrity Rules (ASX Market) 2010*, in force between 1 August 2010 and 6 May 2018.

Corporations Act means the *Corporations Act 2001* (Cth).

Exchange Markets Rules means the *ASIC Market Integrity (Competition in Exchange Markets) Rules 2011*, in force between 5 May 2011 and 6 May 2018.

Market Integrity Rules means the ASX Rules, the Exchange Markets Rules and the Securities Markets Rules.

Securities Markets Rules means the *ASIC Market Integrity Rules (Securities Markets) 2017*, in force between 7 May 2018 to the present.

PURSUANT TO S 21 OF THE *FEDERAL COURT OF AUSTRALIA ACT 1976* (CTH), THE COURT DECLARES THAT:

1. By reason of:
 - (a) the conduct of the first defendant (CommSec) referred to in [4(a)-(m)] below (the CommSec Reported Conduct); and

(b) various failures in relation to systems, processes and people in the delivery of financial services identified in the internal root cause analysis conducted by CommSec in or around 2019 to identify common underlying factors in respect of the CommSec Reported Conduct (the CommSec Root Cause Analysis),

CommSec failed to do all things necessary, during the period 1 March 2015 to 18 June 2020, to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act.

2. By reason of:

(a) the conduct of the second defendant (AUSIEX) referred to in [5(a)-(h)] below (the AUSIEX Reported Conduct); and

(b) various failures in relation to systems, processes and people in the delivery of financial services identified in the internal root cause analysis conducted by AUSIEX in or around 2019 to identify common underlying factors in respect of the AUSIEX Reported Conduct (the AUSIEX Root Cause Analysis),

AUSIEX failed to do all things necessary, during the period 1 March 2015 to February 2019, to ensure that the financial services covered by the AUSIEX License were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act.

3. CommSec contravened s 12DB of the ASIC Act by representing that it considered ASX CentrePoint (ASXCP) as an execution venue for orders when it did not in fact consider ASXCP as an execution venue for orders from ASB customers during the period 1 March 2015 to 26 March 2018.

PURSUANT TO S 1317E OF THE *CORPORATIONS ACT 2001* (CTH) THE COURT DECLARES THAT:

4. CommSec contravened s 798H of the Corporations Act by reason of the following contraventions of the Market Integrity Rules:

(a) rule 2.1.3 of the ASX Rules and rule 2.1.3 of the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to have in place appropriate supervisory policies and procedures to ensure brokerage services were provided in compliance with s 912A(1)(a) of the Corporations Act, from

1 March 2015 until the introduction of enhanced control reports between August 2018 and May 2019;

- (b) rule 3.5.9 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to ensure that 1,237 reconciliations of trust accounts performed between 1 March 2015 and 23 March 2020, were accurate in all respects;
- (c) rule 3.5.10 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to notify ASIC within 2 business days that a trust account reconciliation that was accurate in all respects had not been performed in accordance with rule 3.5.9 of the ASX Rules or Securities Markets Rules (as applicable) or that there was a deficiency of funds in its trust account according to a reconciliation performed pursuant to rule 3.5.9, on 9 occasions between 31 May 2018 and 28 November 2019;
- (d) rule 3.4.1(1) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to provide trade confirmations as required with respect to 1,206 trade confirmations that were required to be issued between 1 March 2015 and 6 November 2019;
- (e) rule 3.4.1(3)(a) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of issuing confirmations in respect of market transactions in exchange traded options which did not accurately provide the information required to be included in a confirmation under Division 3 of Part 7.9 of the Corporations Act, being information the clients needed to understand the nature of the transaction to which the confirmations related, on 187,891 occasions between 1 March 2015 and 15 June 2019;
- (f) rule 3.4.1(3)(f) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of issuing equities trade confirmations which did not include a statement that the transaction involved a crossing (being a transaction in respect of which CommSec acted on behalf of both buying and selling clients to the transaction), in circumstances where the transaction did involve a crossing, on 17,307 occasions between 24 April 2017 and 29 April 2019;
- (g) rule 4.2.1(1)(h) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to maintain accurate

records in sufficient detail in relation to confirmations issued between 1 March 2015 and 1 December 2018 for rebooked trades through CommSec, since CommSec did not maintain accurate records in sufficient detail to show particulars of the incorrect brokerage and ASX clear fees used to derive the total value following the rebooked trade shown in confirmations;

- (h) rule 2.1.3 of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to have appropriate supervisory procedures in place between 1 March 2015 to October 2018, to ensure that trade confirmations issued by CommSec complied with the requirements of rule 3.4.1 and 4.2.1 of the Market Integrity Rules.
- (i) rule 5.6.1(a) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to have in place an appropriate automated pre-trade filter in the relevant automated order processing system through which orders from ASB customers were directed between 1 March 2015 and 1 November 2018, to detect possible trades where there would be no change in beneficial ownership;
- (j) 5.6.3(1)(a) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to ensure, between 1 March 2015 and 1 November 2018, that the relevant automated order processing system through which orders from ASB customers were directed, had in place appropriate organisational and technical resources (as evidenced by the failure in paragraph (i) above);
- (k) rule 3.2.2 of the Exchange Markets Rules and 3.9.2 of the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to comply with:
 - (i) its Best Execution Policy as published on its website between 1 March 2015 and 26 March 2018 in that ASX CentrePoint was not considered as an execution venue for ASB customers during that period; and
 - (ii) its Best Execution Policies and Procedures in the period June 2016 to February 2019, in so far as it failed to monitor best execution policy performance on a monthly basis, for each month in the month immediately following or shortly thereafter;

- (l) rule 3.1.2(3) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to provide an explanatory booklet in respect of warrants to 49 retail clients (who between them held 32 accounts) before accepting an order from a client to purchase a warrant on the market for the first time, during the period 1 March 2015 to 18 June 2020;
 - (m) rule 3.1.8 of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to enter into the required warrant agreement forms with those 49 retail clients (who between them held 32 accounts) prior to entering into a market transaction to buy warrants on behalf of the client, during the period 1 March 2015 to 18 June 2020, affecting 376 buy transactions during that period;
 - (n) rule 5A.2.1(1) of the Exchange Markets Rules and rule 7.4.2(1) of the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to include the relevant intermediary identification (by reference to an AFSL number) in regulatory data submitted to relevant market operators on 84,196 occasions during the period 1 March 2015 and 18 July 2019.
5. AUSIEX contravened s 798H of the Corporations Act by reason of the following contraventions of the Market Integrity Rules:
- (a) rule 3.5.9 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to ensure that 1,175 reconciliations of trust accounts performed between 1 March 2015 and 18 September 2019, were accurate in all respects;
 - (b) rule 3.5.10 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to notify ASIC within two business days that a trust account reconciliation that was accurate in all respects had not been performed in accordance with rule 3.5.9 of the ASX Rules or the Securities Markets Rules (as applicable) on 4 occasions between 6 June 2018 and 23 September 2019;
 - (c) rule 3.4.1(1) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to provide trade confirmations as required with respect to 3,424 trade confirmations that were required to be issued between 1 March 2015 and 27 November 2019;

- (d) rule 3.4.1(3)(a) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of issuing confirmations in respect of market transactions which did not accurately provide the information required to be included in a confirmation under Division 3 of Part 7.9 of the Corporations Act, being information the clients needed to understand the nature of the transaction to which the confirmations related, on 18,367 occasions between 9 November 2015 and 15 June 2019;
- (e) rule 3.4.1(3)(f) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of issuing equities trade confirmations which did not include a statement that the transaction involved a crossing (being a transaction in respect of which AUSIEX acted on behalf of both buying and selling clients to the transaction) in circumstances where the transaction did involve a crossing, on 297 occasions between 24 April 2017 and 7 May 2019;
- (f) rule 4.2.1(1)(h) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to maintain accurate records in sufficient detail to show particulars of the incorrect expiry date showing the "Liquidation Advice" section of confirmations issued between 1 March 2015 and 23 February 2019, since AUSIEX did not retain records containing the particulars of the incorrect expiry date shown on confirmations issued to customers during that time;
- (g) rule 2.1.3 of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to have appropriate supervisory procedures in place between 1 March 2015 to October 2018, to ensure that trade confirmations issued by AUSIEX complied with the requirements of rule 3.4.1 and 4.2.1 of the Market Integrity Rules;
- (h) rule 3.2.2 of the Exchange Markets Rules and 3.9.2 of the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to comply with its Best Execution Policies and Procedures in the period June 2016 to February 2019, in so far as it failed to monitor best execution policy performance on a monthly basis, for each month in the month immediately following or shortly thereafter;
- (i) rule 5A.2.1(1) of the Exchange Markets Rules and rule 7.4.2(1) of the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure

to include the relevant intermediary identification (by reference to an AFSL number) in regulatory data submitted to relevant market operators on 113 occasions during the period 27 October 2016 and 12 August 2019.

THE COURT ORDERS THAT:

6. Pursuant to s 12GBA of the ASIC Act and s 1317G of the Corporations Act, CommSec pay to the Commonwealth a pecuniary penalty in the amount of \$20 million in relation to the contraventions of s 12DB of the ASIC Act and s 798H of the Corporations Act referred to at [3] and [4] above.
7. Pursuant to s 1317G of the Corporations Act, AUSIEX pay to the Commonwealth a pecuniary penalty in the amount of \$7.12 million in relation to the contraventions of s 798H of the Corporations Act referred to at [5] above.
8. Pursuant to s 1101B of the Corporations Act, CommSec implement the agreed compliance plan set out at Schedule 1 to these orders.
9. Pursuant to s 1101B of the Corporations Act, AUSIEX implement the agreed compliance plan set out at Schedule 2 to these orders.
10. CommSec and AUSIEX pay the plaintiff's costs of the proceeding to be agreed or assessed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

SCHEDULE 1

COMMSEC COMPLIANCE PROGRAMME

1.1 **Definitions:** In addition to terms defined elsewhere in this document the following definitions apply:

AFSL means Australian Financial Services Licence.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means *Australian Securities and Investments Commission Act 2001*.

ASX Rules means the ASIC Market Integrity Rules (ASX Market) 2010.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which market participants are open for general business in Sydney.

Compliance Programme means the compliance programme orders pursuant to section 1101B of the Corporations Act.

CommSec means Commonwealth Securities Limited ACN 067 254 399.

Competition Rules means ASIC Market Integrity (Competition in Exchange Markets) Rules 2011.

Corporations Act means the *Corporations Act 2001* (Cth).

Orders of the Court means the orders made by the Court pursuant to section 1101B of the Corporations Act.

Independent Expert means the Independent Expert engaged by CommSec in accordance with paragraph 12.

Leadership Team means the leadership team responsible for CommSec business activities.

Market Integrity Rules means the ASX Rules, Competition Rules and Securities Markets Rules.

Market Participant means a person allowed to directly participate in a Market (as defined in the Market Integrity Rules).

Project Rampart means the internal project instigated by CommSec and AUSIEX in 2018 to review systems and processes regarding trust reconciliation and to remediate their trust account issues.

Project Umbrella means the internal project instigated by CommSec and AUSIEX in 2018 following identification of the Trade Confirmation Issues.

Relevant Provisions means those sections of the ASIC Act, the Corporations Act and the Market Integrity Rules identified in the SOAFAC (as defined below in paragraph 1.2) that are admitted to have been contravened by CommSec in the SOAFAC.

Reported Conduct has the meaning given in Schedule 1.

Securities Markets Rules means ASIC Market Integrity Rules (Securities Markets) 2017.

Systems and Controls means the systems and controls in place at CommSec which relate to the financial services provided by CommSec as a Market Participant under CommSec's AFSL, including:

- a. Technology and technological governance, including the technology strategy, enterprise architecture that maps the business and technology capabilities, target operating model, approach to system deployment and ensuring system compatibility;
- b. Oversight function, including roles and responsibilities, reporting lines and governance;
- c. Control mechanisms, processes and policies, including on design approval, testing, incident management and change management;
- d. Human resources, skills and competencies; and
- e. Operational risk management, including, delivery and ongoing operation of a) to c.

1.2 The Statement of Agreed Facts and Contraventions (**SOAFAC**) sets out the factual basis for the admitted contraventions by CommSec of the Corporations Act, Market Integrity Rules and the ASIC Act. A summary is contained at Annexure A of the SOAFAC.

1.3 As described in Section L of the SOAFAC, CommSec has undertaken an assessment of the causes of the Reported Conduct and has categorised the types of causes identified as relating to one or more of the following categories, at a high level: people, systems and processes. In particular, the Reported Conduct primarily relates

to failures across multiple systems, processes and business areas, including both legacy and current systems. The specific root cause categorisations assigned to the Reported Conduct are set out at paragraph 558 of the SOAFAC (**Root Causes**) and include, but are not limited to:

- a. business requirements incorrectly coded/inadequately incorporated in system specifications;
- b. inadequate/ineffective testing of specified system requirements;
- c. system specification, including user requirements, were not adequately captured;
- d. outdated and/or incompatible system/software versions;
- e. current standards, policies and/or procedures may not be adequately designed to address or clearly describe risks and/or related controls; and
- f. inadequate design and development of change (scoping, approval and assessment, etc.).

1.4 ASIC considers the number, breadth and duration of the Reported Conduct to be indicative of material failures in broader systems and controls at CommSec. The scope of this Compliance Programme is designed to take a holistic approach to CommSec's Systems and Controls relevant to the Reported Conduct and/or its Root Causes.

Phase 1

2. Phase 1 Review

2.1 The Independent Expert (**IE**) will be required to conduct and complete a review, testing and assessment (**Phase 1 Review**) of the following matters:

- a. the adequacy and effectiveness of existing remediation (where relevant) relating to the Reported Conduct and its Root Causes, including but not limited to, Project Rampart and Project Umbrella; and
- b. the adequacy and effectiveness of all Systems and Controls;

such that reasonable steps have been taken by CommSec to ensure current and ongoing compliance with the Relevant Provisions.

3. Phase 1 Report

- 3.1 CommSec will instruct the IE to provide a written report, in relation to the Phase 1 Review (**Phase 1 Report**) which includes the following:
- a. a statement containing details of any gap, weakness, risk or deficiency of the existing remediation and the Systems and Controls identified during the course of the Phase 1 Review (**Deficiencies**), as well as details of the cause of any Deficiencies;
 - b. assessment and benchmarking of any Deficiencies against existing internationally recognised standards, such as:
 - i. ISO 31000: Risk management;
 - ii. ISO/IEC 38500: 2015 Information technology – Governance of IT for the organisation;
 - iii. COBIT 5, and
 - c. if any Deficiency is identified:
 - i. details of how the Deficiency impacts the assessments required by the Phase 1 Review at paragraph 2;
 - ii. recommendations on how to rectify identified Deficiencies; and
 - d. if no Deficiency is identified, or recommendation made, an explicit statement as to whether the IE has determined in the course of the Phase 1 Review:
 - i. that existing remediation resulting from the Reported Conduct and its Root Causes (where applicable) is adequate and effective; and
 - ii. that all Systems and Controls are adequate and effective, such that CommSec has taken reasonable steps to ensure current and ongoing compliance with the Relevant Provisions.
- 3.2 CommSec must ensure that the terms of the IE engagement require the IE:
- a. to conduct the Phase 1 Review and deliver the Phase 1 Report to CommSec and ASIC within 4 months after the date of the appointment of the IE (or such longer period as agreed in writing by ASIC and CommSec);

- b. to hold monthly bilateral meetings with ASIC to provide ASIC with updates in relation to the Phase 1 Review and the Phase 1 Report (or such longer period as agreed in writing by ASIC); and
- c. if requested by ASIC, also hold tripartite meetings with CommSec and ASIC in relation to the Phase 1 Review and the Phase 1 Report.

4. Phase 1 Remedial Action Plan

- 4.1 CommSec will address all Deficiencies identified in the Phase 1 Report and any recommendations to rectify all Deficiencies by the IE and develop a plan (**Phase 1 Remedial Action Plan**) to rectify any such Deficiencies and address the IE's recommendations from the Phase 1 Report in accordance with this paragraph 4.
- 4.2 Any Phase 1 Remedial Action Plan must:
 - a. detail the action CommSec proposes to take to address the recommendations identified in the Phase 1 Report to rectify the Deficiencies;
 - b. specify the date by which each action will be taken;
 - c. identify a suitably senior and qualified representative of CommSec to be responsible for implementation and timely and effective delivery of each action under the Phase 1 Remedial Action Plan; and
 - d. detail any accelerated remedial action for any recommendation identified in the Phase 1 Report to be of high priority.
- 4.3 In developing a Phase 1 Remedial Action Plan, CommSec must:
 - a. work with the IE to produce actions to address the Deficiencies and recommendations identified in the Phase 1 Report;
 - b. meet with the IE and ASIC no later than 1 month prior to the submission of the Phase 1 Remedial Action Plan to ASIC and the IE in accordance with the time frame set out in paragraph 4.4(a), for discussion of any proposed implementation of the IE recommendations from the Phase 1 Review, including the proposed terms of any Phase 1 Remedial Action Plan;
 - c. within 3 Business Days of the meeting held in accordance with paragraph 4.3 (b), provide ASIC and the IE with a draft of the proposed Phase 1 Remedial Action Plan; and

- d. make any reasonable modifications to the proposed Phase 1 Remedial Action Plan requested by:
 - i. ASIC, provided ASIC has made such a request within 20 Business Days (or such longer period as agreed in writing by ASIC and CommSec) after ASIC was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c); or
 - ii. the IE, provided the IE has made such a request within 10 Business Days (or such later date as agreed) after the IE was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c).

4.4 CommSec must:

- a. provide the Phase 1 Remedial Action Plan to ASIC and the IE within 3 months following receipt of the Phase 1 Report (or such longer period as ASIC approves in writing); and
- b. seek written confirmation from ASIC that it has no objections to the terms of the Phase 1 Remedial Action Plan, such confirmation not to be unreasonably withheld and upon receipt of that confirmation, the Phase 1 Remedial Action Plan will be finalised in the terms that are subject to the confirmation; and
- c. meet with ASIC on a monthly basis to provide progress updates in relation to the implementation of the Phase 1 Remedial Action Plan.

4.5 CommSec must, within 5 Business Days of implementation of all of the actions required under the Phase 1 Remedial Action Plan, provide written notification to ASIC and the IE that the Phase 1 Remedial Action Plan has been fully implemented.

4.6 If the Phase 1 Report does not identify any Deficiencies or include any recommendation by the IE, there will be no Phase 2 Review.

Phase 2

5. Phase 2 Review

5.1 CommSec will instruct the IE to conduct and complete a review which includes testing and assessment of the following matters (**Phase 2 Review**):

- a. whether the actions (if any) implemented from the Phase 1 Remedial Action Plan have rectified the Deficiencies and addressed the recommendations made by the IE in the Phase 1 Report; and
 - b. the effectiveness of CommSec's implementation of any recommendations and actions arising from the Phase 1 Report; and
- if any Deficiency still exists, to provide further recommendations to adequately and effectively rectify the Deficiency.

5.2 CommSec must ensure that the terms of the IE engagement require the IE:

- a. to commence the Phase 2 Review within 3 months after the date of the implementation of the Phase 1 Remedial Action Plan or such alternative time agreed with ASIC (such agreement not be unreasonably withheld); and
- b. to provide ASIC with monthly progress updates (or such longer period as agreed in writing by ASIC and CommSec) in relation the Phase 2 Review and the Final Report (as defined below).

6. Final Report

6.1 CommSec will instruct the IE to produce and deliver a report, in relation to the Phase 2 Review (**Final Report**) which includes:

- a. details of the outcome of the testing and assessment set out at paragraph 5.1 above; and
- b. a statement as to whether each of the actions set out in the Phase 1 Remedial Action Plan have been effectively implemented; and
- c. any further recommendation that the IE considers is necessary or appropriate for CommSec to implement in order to ensure:
 - i. any actions in the Phase 1 Remedial Action Plan that the IE considers have not been effectively implemented are effectively implemented; and
 - ii. any Deficiencies are adequately and effectively rectified; and
- d. if no Deficiency is identified or recommendation made, an explicit statement as to whether the IE has determined in the course of the Phase 2 Review:

- i. that Phase 1 Remedial Action Plan was adequate and effective in addressing the Deficiencies identified and recommendations made by the IE in the Phase 1 Report; and
- ii. that all Systems and Controls are adequate and effective, such that CommSec has taken reasonable steps to ensure current and ongoing compliance with the Relevant Provisions.

6.2 CommSec must ensure that the terms of the engagement require the IE to:

- a. deliver the Final Report to CommSec and ASIC within 2 months after the date of commencement of the Phase 2 Review (or such longer period as agreed in writing between ASIC and CommSec);
- b. hold monthly bilateral meetings with ASIC to provide ASIC updates in relation the Phase 2 Review and the Final Report (or such longer period as agreed in writing by ASIC); and
- c. if requested by ASIC, hold tripartite meetings with CommSec and ASIC in relation the Phase 2 Review and the Final Report.

7. Phase 2 Remedial Action Plan

7.1 CommSec will be required to address all Deficiencies identified in the Final Report and the recommendations to rectify them by the IE in the Final Report and, if there are any, develop a plan (**Phase 2 Remedial Action Plan**) to rectify each Deficiency and address the IE's recommendations from the Final Report. If the Final Report does not identify any Deficiencies and the IE has determined in the course of the Phase 2 Review that the recommendations in the Phase 1 Report have been effectively addressed and actions in the Phase 1 Remedial Action Plan have been effectively implemented (as contemplated in the statement at 6.1(d)), then there will be no Phase 2 Remedial Action Plan.

7.2 Any Phase 2 Remedial Action Plan must:

- a. detail the action CommSec will to take to rectify any Deficiency identified in the Final Report and address the IE's recommendations in the Final Report (if any); and
- b. set out the proposed timeline for completing implementation of each action required under the Phase 2 Remediation Action Plan; and

- c. identify a suitably senior and qualified representative of CommSec to be responsible for implementation and timely and effective delivery of each action under the Phase 2 Remediation Action Plan; and
- d. detail any accelerated remedial action for any recommendation identified in the Final Report to be of high priority.

7.3 In developing any Phase 2 Remedial Action Plan, CommSec must:

- a. produce actions to address the Deficiencies and recommendations identified by the IE in the Final Report (if any); and
- b. meet with the IE and ASIC no later than 1 month prior to the submission of the Phase 2 Remedial Action Plan to ASIC and the IE in accordance with the time frame set out in paragraph 7.4(a) for discussion of any proposed implementation of the IE recommendations from the Phase 2 Review, including the proposed terms of any Phase 2 Remedial Action Plan; and
- c. within 3 Business Days of the meeting held in accordance with paragraph 7.3 (b), provide ASIC and the IE with a draft of the proposed Phase 2 Remedial Action Plan; and
- d. make any reasonable modifications to the proposed Phase 2 Remedial Action Plan requested by:
 - i. ASIC, provided ASIC has made such a request within 20 Business Days after ASIC was provided with a draft of the proposed Phase 2 Remedial Action Plan in accordance with paragraph 7.3(c); or
 - ii. the IE, provided the IE has made such a request within 10 Business Days after the IE was provided with a draft of the proposed Phase 2 Remedial Action Plan in accordance with paragraph 7.3(c).

7.4 CommSec must:

- a. provide the Phase 2 Remedial Action Plan to ASIC and the IE within 3 months following receipt of the Final Report (or such longer period as ASIC approves in writing);
- b. seek written confirmation from:

- i. ASIC that it has no objection the terms of the Phase 2 Remediation Action Plan, such confirmation not to be unreasonably withheld; and
 - ii. the IE that the Phase 2 Remedial Action Plan will, in the professional judgment of the IE, if implemented, satisfactorily address the Deficiencies and the recommendations made by the IE in the Final Report, and upon receipt of those confirmations, the Phase 2 Remedial Action Plan will be finalised in the terms that are subject to the confirmations; and
- c. meet with ASIC on a monthly basis to provide progress updates in relation to implementation of the Phase 2 Remedial Action Plan including if the implementation of the Phase 2 Remedial Action Plan is likely to be delayed. If the Phase 2 Remedial Action Plan is likely to be delayed, CommSec must seek ASIC's agreement to amend the deadline for the implementation of the Phase 2 Remedial Action Plan, such agreement not to be unreasonably withheld.

7.5 CommSec must, within 5 Business Days after the implementation of the actions required under any Phase 2 Remedial Action Plan, provide written confirmation to ASIC that the Phase 2 Remedial Action Plan is fully implemented.

8. Attestation

- 8.1 ASIC is to be provided a written statement on behalf of CommSec, signed by the Executive General Manager of CommSec (or equivalent position, as agreed by ASIC) attesting to the following matters (**Attestation**):
- a. that he or she has read and understood the Phase 1 Report and any Final Report; and
 - b. if any remedial actions were required in response to the IE's recommendations set out in the Phase 1 Report or the Final Report, states whether he or she believes, having made reasonable enquiries, that CommSec has implemented the actions identified in the Phase 1 Remedial Action Plan and if applicable, the Phase 2 Remedial Action Plan; and
 - c. states, whether he or she believes, having made reasonable enquiries:
 - i. that the remediation relating to the Reported Conduct and its Root Causes (where applicable) has been adequate and effective; and

- ii. the Systems and Controls are adequate and effective, such that, reasonable steps have been taken by CommSec to ensure current and ongoing compliance with the Relevant Provisions.

8.2 The Attestation will be provided to ASIC at the earlier of:

- a. 20 Business Days following the delivery by the IE of the Phase 1 Report, if the Phase 1 Report identifies no Deficiencies and makes no recommendations, which contains the statement contemplated in paragraph 3.1(d);
- b. 20 Business following the delivery by the IE of the Final Report, if the Final Report identifies no Deficiencies and makes no recommendations;
- c. 20 Business Days following the giving of the written notice to ASIC referred to in paragraph 7.5; or
- d. such other date agreed in writing between ASIC and CommSec.

8.3 In the event that:

- a. CommSec does not provide the Attestation to ASIC by the time required in paragraph 8.2; or
- b. ASIC considers (acting reasonably) that the Attestation is in terms which are unacceptable;

ASIC may notify CommSec in writing accordingly and provide CommSec with 20 Business Days (or such longer period as ASIC approves in writing) to respond. If CommSec fails to respond, ASIC may commence proceedings to enforce compliance with the Court's Orders.

9. Ending of the Compliance Programme

9.1 The Compliance Programme will end following compliance with all obligations under the Court's Order including compliance with the Attestation clause referred to in paragraph 8 above.

10. Other

10.1 The Phase 1 Report, any Final Report, any Phase 1 Remedial Action Plan and any Phase 2 Remedial Action Plan, including a list of concluded actions, must be provided to the Leadership Team and Board of Directors of CommSec.

- 10.2 CommSec will, within a reasonable period of receiving a request from ASIC, provide all documents and information reasonably requested by ASIC from time to time for the purposes of assessing CommSec's compliance with the Compliance Programme, including any correspondence with the IE, other than any documents or information subject to a claim of legal professional privilege.
- 10.3 CommSec will be responsible for the costs of its compliance with the Compliance Programme.
- 10.4 CommSec and/or ASIC may apply to the Court for a variation of the terms of this Compliance Programme at any time and the Compliance Programme is subject to the Orders of the Court from time to time.

11. Non-compliance

- 11.1 CommSec must notify ASIC as soon as reasonably practicable and in any event within 10 Business Days after becoming aware of any failure to comply with the Orders of the Court.
- 11.2 If CommSec fails to comply with the Orders of the Court, ASIC may commence proceedings to enforce compliance, following:
- a. written notice to CommSec of ASIC's intention to commence proceedings; and
 - b. providing CommSec with 20 Business Days (or such longer period as ASIC approves in writing) to respond.

12. Appointing the IE

- 12.1 CommSec must request ASIC to approve, within 30 Business Days of the date of the Orders of the Court, or within such longer period as may be agreed in writing by ASIC and CommSec:
- a. the appointment of the IE required for the purposes of the Compliance Programme which meets the criteria in paragraph 12.2 below;
 - b. the draft terms of engagement for that IE that meet the requirements of the Compliance Programme; and
 - c. if ASIC approves the nominated IE and draft terms of engagement following a request by CommSec under paragraph 12.1, CommSec undertakes to appoint the approved IE on the terms approved by ASIC, within 10 Business Days of receiving

ASIC's approval, or within such longer period as may be agreed by ASIC and CommSec.

- 12.2 The IE nominated by CommSec:
- a. must have the necessary expertise, experience and operational capacity to perform the role contemplated by the Compliance Programme; and
 - b. must be independent of CommSec, its related bodies corporate and its officers and will at all material times be capable of exercising objective and impartial judgement.
- 12.3 The appointment of the IE must be approved by ASIC in writing before the appointment takes effect (such approval not to be unreasonably withheld).
- 12.4 CommSec will provide ASIC with any information, explanation or documents it requests for the purposes of determining whether to approve the appointment of the IE, subject to a claim of legal professional privilege.
- 12.5 CommSec must advise ASIC of the expertise and any prior association of the proposed IE with CommSec, its related bodies corporate and officers at the time approval is sought from ASIC.

13. Appointing a new independent expert

- 13.1 If the IE advises CommSec and ASIC in writing that he or she is unable to continue his or her appointment, or if the engagement is terminated because of an actual or potential conflict of interest of the IE that arises during the engagement, CommSec must within 15 Business Days (or such longer period agreed in writing with ASIC) after the ending or termination of the engagement, appoint and engage another independent expert in accordance with paragraph 12 (with such appointment to take effect for the remaining duration of the Compliance Programme).

14. Terms of engagement

- 14.1 The terms of engagement for the IE will be approved by ASIC in writing before the engagement takes effect (such approval not to be unreasonably withheld) and once ASIC has provided its approval, the terms of engagement may only be varied with the agreement of ASIC (acting reasonably).
- 14.2 CommSec must ensure that the terms of engagement provided to ASIC for approval under paragraph 12.1:

- a. require CommSec to engage the IE to perform the tasks necessary to fulfil CommSec's obligations under the Compliance Programme;
- b. require CommSec to permit the IE, subject to any claim of legal professional privilege, to the extent that it is reasonable having regard to the requirements of this Compliance Programme, to have access to its books, to interview present employees, contractors, agents and/or consultants and to consult with ASIC and disclose to ASIC any further information obtained by the IE in the course of carrying out the engagement for the purposes of the Compliance Programme;
- c. require CommSec to give the IE any information, document, or explanation reasonably requested by the IE in relation to any matter in any way connected with the reports required to be prepared by the IE for the purposes of the Compliance Programme (other than information, documents or explanations subject to a claim of legal professional privilege);
- d. require CommSec to reasonably assist the IE in conducting the work required for the purposes of the Compliance Programme;
- e. include a statement to the effect that the work of the IE is being carried out for CommSec and ASIC, and acknowledging that ASIC is relying on the work of the IE;
- f. include a statement that, if requested by ASIC, ASIC is to be copied into all or some communications between CommSec and the IE;
- g. require that the IE provide ASIC with a copy of the final versions of the Phase 1 Report and any Final Report at the same time as the final version of each report is provided to CommSec;
- h. include an acknowledgement that in relation to the Phase 1 Report and any Final Report to be provided to ASIC and CommSec, ASIC may from time to time:
 - i. publicly refer to the content of the reports; and
 - ii. make public:
 1. a summary of the content of the reports; or
 2. a statement that refers to the content of the reports.

- i. require that the IE provide ASIC with a copy of its proposed work and testing plan in relation to the assessment, review and testing required for the purposes of the Compliance Programme;
- j. require that the IE must make any reasonable modifications to its work and testing plan requested by ASIC, provided ASIC has made such request within 10 Business Days after ASIC was provided with a copy of the proposed work and testing plan (or such longer period as agreed in writing by ASIC); and
- k. make provision for circumstances where an actual or potential conflict of interest arises in relation to the IE, including by requiring that the IE:
 - i. as soon as possible after becoming aware of an actual or potential conflict of interest that arises during the engagement, inform ASIC of the actual or potential conflict of interest;
 - ii. follow the reasonable directions of ASIC to effectively manage the actual or potential conflict of interest; and
 - iii. if the actual or potential conflict of interest cannot be effectively managed, follow the reasonable directions of ASIC to terminate the engagement.

15. ASIC public reporting

15.1 In relation to the Phase 1 Report, Final Report, any Phase 1 Remedial Action Plan, and any Phase 2 Remedial Action Plan arising from the IE's recommendations, ASIC:

- a. may issue a media release referring to the outcome, content, or compliance with any of those reports or plans; and
- b. may from time to time publicly refer to the content of the written reports or plans, and may make available for public inspection a summary of the content of the written reports or plans, or a statement that refers to the content of those report or plans.

15.2 In relation to the Compliance Programme, ASIC:

- a. may issue a media release on the Compliance Programme ordered by the Court, refer to any such order, and refer to the concerns of ASIC which led to the court-ordered Compliance Programme; and

- b. may from time to time publicly refer to the Compliance Programme.
- 15.3 In relation to paragraph 15.1 and 15.2, ASIC will delete, remove or redact any information prior to publication if (acting reasonably) ASIC is satisfied that the information:
- a. is personal information (as defined in the Privacy Act 1988 (Cth));
 - b. should not be disclosed because it would be against the public interest to do so; or
 - c. contains information that would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of CommSec.

16. Interpretation of Compliance Programme

- 16.1 In the event that CommSec and the IE are unable to agree on the interpretation of any matter the subject of this Compliance Programme, CommSec and the IE must use reasonable efforts to resolve the disagreement and if unable to do so, may request a meeting with ASIC to discuss the matter in an effort to resolve the disagreement. If ASIC requests, each of CommSec and the IE are to provide ASIC with a written submission as to the matter in dispute 3 Business Days before any such meeting.

Schedule A

The Reported Conduct is:

- a. incorrect brokerage fees charged by CommSec, as detailed at paragraphs [23] to [68] of the SOAFAC (**Brokerage Issue**);
- b. breaches of client money and trust account requirements by CommSec, as detailed at paragraphs [86] to [165] of the SOAFAC, (**Client Money Issue**);
- c. inaccuracies in trade confirmations sent or failure to send trade confirmations as required by CommSec, as detailed at paragraphs [237] to [323] of the SOAFAC (**Trade Confirmations Issue**);
- d. inadequate automated order processing (AOP) filter by CommSec to determine no change in beneficial ownership (NCBO), as detailed at paragraphs [445] to [454] of the SOAFAC (**AOP Issue**);

- e. best execution obligations failures by CommSec, as detailed at paragraph [457] to [481] of the SOAFAC (**Best Execution Issue**);
- f. trading of warrants on CommSec client accounts without having provided a copy of the current explanatory statement in respect of warrants published by the relevant market operator and without a valid Warrant Agreement Form (WAF) on record, as detailed at paragraphs [494] to [506] of the SOAFAC (**Warrant Agreement Issue**);
and
- g. failure to adhere to regulatory data requirements by CommSec, as detailed at paragraphs [511] to [521] of the SOAFAC (**Regulatory Data Issue**).

SCHEDULE 2

AUSIEX COMPLIANCE PROGRAMME

1.1 **Definitions:** In addition to terms defined elsewhere in this document the following definitions apply:

AFSL means Australian Financial Services Licence.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means *Australian Securities and Investments Commission Act 2001*.

ASX Rules means the ASIC Market Integrity Rules (ASX Market) 2010.

AUSIEX means the Australian Investment Exchange Limited ACN 076 515 930.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which market participants are open for general business in Sydney.

Compliance Programme means the compliance programme orders pursuant to section 1101B of the Corporations Act.

Competition Rules means ASIC Market Integrity (Competition in Exchange Markets) Rules 2011.

Corporations Act means the *Corporations Act 2001* (Cth).

Orders of the Court means the orders made by the Court pursuant to section 1101B of the Corporations Act.

Independent Expert means the Independent Expert engaged by AUSIEX in accordance with paragraph 12.

Leadership Team means the Chief Executive Officer of AUSIEX and his or her direct reports.

Market Integrity Rules means the ASX Rules, Competition Rules and Securities Markets Rules.

Market Participant means a person allowed to directly participate in a Market (as defined in the Market Integrity Rules).

NRI means Nomura Research Institute, Ltd.

Project Rampart means the internal project instigated by CommSec and AUSIEX in 2018 to review systems and processes regarding trust reconciliation and to remediate their trust account issues.

Project Umbrella means the internal project instigated by CommSec and AUSIEX in 2018 following identification of the Trade Confirmation Issues.

Relevant Provisions means those sections of the ASIC Act, the Corporations Act and the Market Integrity Rules identified in the SOAFAC (as defined below in paragraph 1.2) that are admitted to have been contravened by AUSIEX in the Statement of Agreed Facts and Contraventions.

Reported Conduct has the meaning given in Schedule 1.

Sale means the agreement to sell AUSIEX to a subsidiary of NRI announced on 28 April 2020.

Securities Markets Rules means ASIC Market Integrity Rules (Securities Markets) 2017.

Systems and Controls means the systems and controls in place at AUSIEX after completion of the Sale that relate to the financial services provided by AUSIEX as a Market Participant under AUSIEX's AFSL, including:

- a. Technology and technological governance, including the technology strategy, enterprise architecture that maps the business and technology capabilities, target operating model, approach to system deployment and ensuring system compatibility;
- b. Oversight function, including roles and responsibilities, reporting lines and governance;
- c. Control mechanisms, processes and policies, including on design approval, testing, incident management and change management;
- d. Human resources, skills and competencies; and
- e. Operational risk management, including, delivery and ongoing operation of a) to d).

1.2 The Statement of Agreed Facts and Contraventions (**SOAFAC**) sets out the factual basis for the admitted contraventions by AUSIEX of the Corporations Act, Market

Integrity Rules and the ASIC Act. A summary is contained at Annexure A of the SOAFAC.

- 1.3 As described in Section L of the SOAFAC, AUSIEX has undertaken an assessment of the causes of the Reported Conduct and has categorised the types of causes identified as relating to one or more of the following categories, at a high level: people, systems and processes. In particular, the Reported Conduct primarily relates to failures across multiple systems, processes and business areas, including both legacy and current systems. The specific root cause categorisations assigned to the Reported Conduct are set out at paragraph 568 of the SOAFAC (**Root Causes**) and include, but are not limited to:
- a. inadequate/ineffective testing of specified system requirements;
 - b. system specification, including user requirements, were not adequately captured; and
 - c. current standards, policies and/or procedures may not be adequately designed to address or clearly describe risks and/or related controls.
- 1.4 ASIC considers the number, breadth and duration of the Reported Conduct to be indicative of material failures in broader systems and controls at AUSIEX. The scope of this Compliance Programme is designed to take a holistic approach to AUSIEX's Systems and Controls relevant to the Reported Conduct and/or its Root Causes.

Phase 1

2. Phase 1 Review

- 2.1 The Independent Expert (**IE**) will be required to conduct and complete a review, testing and assessment (**Phase 1 Review**) of the following matters:
- a. the adequacy and effectiveness of existing remediation (where relevant) relating to the Reported Conduct and its Root Causes, including but not limited to, Project Rampart and Project Umbrella; and
 - b. the adequacy and effectiveness of all Systems and Controls;
- such that reasonable steps have been taken by AUSIEX to ensure current and ongoing compliance with the Relevant Provisions.

AUSIEX may make submissions to the IE and ASIC and the IE and ASIC may agree that certain Systems and Controls are outside the scope of the IE's review because AUSIEX intends to replace that system or control as part of its transition to a new control environment following completion of its sale to NRI.

3. Phase 1 Report

3.1 AUSIEX will instruct the IE to provide a written report, in relation to the Phase 1 Review (**Phase 1 Report**) which includes the following:

- a. a statement containing details of any gap, weakness, risk or deficiency of the existing remediation and the Systems and Controls identified during the course of the Phase 1 Review (**Deficiencies**), as well as details of the cause of any Deficiencies;
- b. assessment and benchmarking of any Deficiencies against existing internationally recognised standards, such as:
 - i. ISO 31000: Risk management;
 - ii. ISO/IEC 38500: 2015 Information technology – Governance of IT for the organisation;
 - iii. COBIT 5, and
- c. if any Deficiency is identified:
 - iv. details of how the Deficiency impacts the assessments required by the Phase 1 Review at paragraph 2;
 - v. recommendations on how to rectify identified Deficiencies; and
- d. if no Deficiency is identified, or recommendation made, an explicit statement as to whether the IE has determined in the course of the Phase 1 Review:
 - i. that existing remediation resulting from the Reported Conduct and its Root Causes (where applicable) is adequate and effective; and
 - ii. that all Systems and Controls are adequate and effective, in order to ensure that AUSIEX has taken reasonable steps to ensure current and ongoing compliance with the Relevant Provisions.

3.3 AUSIEX must ensure that the terms of the IE engagement require the IE:

- a. to conduct the Phase 1 Review and deliver the Phase 1 Report to AUSIEX and ASIC within 18 weeks after the latter of the Sale or the date of the appointment of the IE (or such longer period as agreed in writing by ASIC and AUSIEX);
- b. to hold monthly bilateral meetings with ASIC to provide ASIC with updates in relation to the Phase 1 Review and the Phase 1 Report (or such longer period as agreed in writing by ASIC); and
- c. if requested by ASIC, also hold tripartite meetings with AUSIEX and ASIC in relation to the Phase 1 Review and the Phase 1 Report.

4. Phase 1 Remedial Action Plan

- 4.1 AUSIEX will consider all Deficiencies identified in the Phase 1 Report and any recommendations to rectify all Deficiencies by the IE and develop a plan (**Phase 1 Remedial Action Plan**) to rectify any such Deficiencies and address any IE's recommendations from the Phase 1 Report in accordance with this paragraph 4.
- 4.2 Any Phase 1 Remedial Action Plan must:
 - a. detail the action AUSIEX proposes to take to address the recommendations identified in the Phase 1 Report to rectify the Deficiencies;
 - b. specify the date by which each action will be taken;
 - c. identify a suitably senior and qualified representative of AUSIEX to be responsible for implementation and timely and effective delivery of each action under the Phase 1 Remedial Action Plan; and
 - d. detail any accelerated remedial action for any recommendation identified in the Phase 1 Report to be of high priority.
- 4.3 In developing a Phase 1 Remedial Action Plan, AUSIEX must:
 - a. work with the IE to produce actions to address the Deficiencies and recommendations identified in the Phase 1 Report;
 - b. meet with the IE and ASIC no later than 1 month prior to the submission of the Phase 1 Remedial Action Plan to ASIC and the IE in accordance with the time frame set out in paragraph 4.4(a), for discussion of any proposed implementation of the IE recommendations from the Phase 1 Review, including the proposed terms of any Phase 1 Remedial Action Plan;

- c. within 3 Business Days of the meeting held in accordance with paragraph 4.3 (b), provide ASIC and the IE with a draft of the proposed Phase 1 Remedial Action Plan; and
- d. make any reasonable modifications to the proposed Phase 1 Remedial Action Plan requested by:
 - i. ASIC, provided ASIC has made such a request within 20 Business Days (or such longer period as agreed in writing by ASIC and AUSIEX) after ASIC was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c); or
 - ii. the IE, provided the IE has made such a request within 10 Business Days (or such later date as agreed) after the IE was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c).

4.4 AUSIEX must:

- a. provide the Phase 1 Remedial Action Plan to ASIC and the IE within 2 months following receipt of the Phase 1 Report (or such longer period as ASIC approves in writing); and
- b. seek written confirmation from ASIC that it has no objections to the terms of the Phase 1 Remedial Action Plan, such confirmation not to be unreasonably withheld and upon receipt of that confirmation, the Phase 1 Remedial Action Plan will be finalised in the terms that are subject to the confirmation; and
- c. meet with ASIC on a monthly basis to provide progress updates in relation to the implementation of the Phase 1 Remedial Action Plan.

4.5 AUSIEX must, within 5 Business Days of implementation of all of the actions required under the Phase 1 Remedial Action Plan, provide written notification to ASIC and the IE that the Phase 1 Remedial Action Plan has been fully implemented.

4.6 If the Phase 1 Report does not identify any Deficiencies or include any recommendation by the IE, there will be no Phase 2 Review.

Phase 2

5. Phase 2 Review

- 5.1 AUSIEX will instruct the IE to conduct and complete a review which includes testing and assessment of the following matters (**Phase 2 Review**):
- a. whether the actions (if any) implemented from the Phase 1 Remedial Action Plan have rectified the Deficiencies and addressed the recommendations made by the IE in the Phase 1 Report; and
 - b. the effectiveness of AUSIEX's implementation of any recommendations and actions arising from the Phase 1 Report, and
if any Deficiency still exists, to provide further recommendations to adequately and effectively rectify the Deficiency.
- 5.2 AUSIEX must ensure that the terms of the IE engagement require the IE:
- a. to commence the Phase 2 Review within 3 months after the date of the implementation of the Phase 1 Remedial Action Plan or such alternative time agreed with ASIC (such agreement not be unreasonably withheld); and
 - b. to provide ASIC with monthly progress updates (or such longer period as agreed in writing by ASIC and AUSIEX) in relation the Phase 2 Review and the Final Report (as defined below).

6. Final Report

- 6.1 AUSIEX will instruct the IE to produce and deliver a report, in relation to the Phase 2 Review (**Final Report**) which includes:
- a. details of the outcome of the testing and assessment set out at paragraph 5.1 above; and
 - b. a statement as to whether each of the actions set out in the Phase 1 Remedial Action Plan have been effectively implemented; and
 - c. any further recommendation that the IE considers is necessary or appropriate for AUSIEX to implement in order to ensure:
 - i. any actions in the Phase 1 Remedial Action Plan that the IE considers have not been effectively implemented are effectively implemented; and
 - ii. any Deficiencies are adequately and effectively rectified; and
 - d. if no Deficiency is identified or recommendation made, an explicit statement as to whether the IE has determined in the course of the Phase 2 Review:

- i. that Phase 1 Remedial Action Plan was adequate and effective in addressing the Deficiencies identified and recommendations made by the IE I the Phase 1 Report; and
- ii. all Systems and Controls are adequate and effective,
such that AUSIEX has taken reasonable steps to ensure current and ongoing compliance with the Relevant Provisions.

6.2 AUSIEX must ensure that the terms of the engagement require the IE to:

- a. deliver the Final Report to AUSIEX and ASIC within 2 months after the date of commencement of the Phase 2 Review (or such longer period as agreed in writing between ASIC and AUSIEX);
- b. hold monthly bilateral meetings with ASIC to provide ASIC updates in relation the Phase 2 Review and the Final Report (or such longer period as agreed in writing by ASIC); and
- c. if requested by ASIC, hold tripartite meetings with AUSIEX and ASIC in relation the Phase 2 Review and the Final Report.

7. Phase 2 Remedial Action Plan

7.1 AUSIEX will be required to address all Deficiencies identified in the Final Report and the recommendations to rectify them by the IE in the Final Report and, if there are any, develop a plan (**Phase 2 Remedial Action Plan**) to rectify each Deficiency and address the IE's recommendations from the Final Report. If the Final Report does not identify any Deficiencies and the IE has determined in the course of the Phase 2 Review that the recommendations in the Phase 1 Report have been effectively addressed and actions in the Phase 1 Remedial Action Plan have been effectively implemented (as contemplated in the statement at 6.1(d)), then there will be no Phase 2 Remedial Action Plan.

7.2 Any Phase 2 Remedial Action Plan must:

- a. detail the action AUSIEX will to take to rectify any Deficiency identified in the Final Report and address the IE's recommendations in the Final Report (if any);
- b. set out the proposed timeline for completing implementation of each action required under the Phase 2 Remediation Action Plan;

- c. identify a suitably senior and qualified representative of AUSIEX to be responsible for implementation and timely and effective delivery of each action under the Phase 2 Remediation Action Plan; and
- d. detail any accelerated remedial action for any recommendation identified in the Final Report to be of high priority.

7.3 In developing any Phase 2 Remedial Action Plan, AUSIEX must:

- a. produce actions to address the Deficiencies and recommendations identified by the IE in the Final Report (if any); and
- b. meet with the IE and ASIC no later than 1 month prior to the submission of the Phase 2 Remedial Action Plan to ASIC and the IE in accordance with the time frame set out in paragraph 7.4(a) for discussion of any proposed implementation of the IE recommendations from the Phase 2 Review, including the proposed terms of any Phase 2 Remedial Action Plan; and
- c. within 3 Business Days of the meeting held in accordance with paragraph 7.3 (b), provide ASIC and the IE with a draft of the proposed Phase 2 Remedial Action Plan; and
- d. make any reasonable modifications to the proposed Phase 2 Remedial Action Plan requested by:
 - i. ASIC, provided ASIC has made such a request within 20 Business Days after ASIC was provided with a draft of the proposed Phase 2 Remedial Action Plan in accordance with paragraph 7.3(c); or
 - ii. the IE provided the IE has made such a request within 10 Business Days after the IE was provided with a draft of the proposed Phase 2 Remedial Action Plan in accordance with paragraph 7.3(c).

7.4 AUSIEX must:

- a. provide the Phase 2 Remedial Action Plan to ASIC and the IE within 2 months following receipt of the Final Report (or such longer period as ASIC approves in writing); and
- b. seek written confirmation from:

- i. ASIC that it has no objection the terms of the Phase 2 Remediation Action Plan, such confirmation not to be unreasonably withheld; and
- ii. the IE that the Phase 2 Remedial Action Plan will, in the professional judgment of the IE, if implemented, satisfactorily address the Deficiencies and recommendations made by the IE in the Final Report,

and upon receipt of those confirmations, the Phase 2 Remedial Action Plan will be finalised in the terms that are subject to the confirmations; and

- c. meet with ASIC on a monthly basis to provide progress updates in relation to implementation of the Phase 2 Remedial Action Plan including if the implementation of the Phase 2 Remedial Action Plan is likely to be delayed. If the Phase 2 Remedial Action Plan is likely to be delayed, AUSIEX must seek ASIC's agreement to amend the deadline for the implementation of the Phase 2 Remedial Action Plan, such agreement not to be unreasonably withheld.

7.5 AUSIEX must, within 5 business days after the implementation of the actions required under any Phase 2 Remedial Action Plan, provide written confirmation to ASIC that the Phase 2 Remedial Action Plan is fully implemented.

8. Attestation

8.1 ASIC is to be provided a written statement on behalf of AUSIEX, signed by the Chief Executive Officer of AUSIEX (or equivalent position, as agreed by ASIC) attesting to the following matters (**Attestation**):

- a. that he or she has read and understood the Phase 1 Report and any Final Report; and
- b. if any remedial actions were required in response to the IE's recommendations set out in the Phase 1 Report or the Final Report, states whether he or she believes, having made reasonable enquiries, that AUSIEX has implemented the actions identified in the Phase 1 Remedial Action Plan and if applicable, the Phase 2 Remedial Action Plan; and
- c. states whether he or she believes, having made reasonable enquiries:
 - i. that the remediation relating to the Reported Conduct and its Root Causes (where applicable) has been adequate and effective; and

ii. the Systems and Controls are adequate and effective,
such that reasonable steps have been taken by AUSIEX to ensure current and ongoing compliance with the Relevant Provisions.

8.2 The Attestation will be provided to ASIC at the earlier of:

- a. 20 business days following the delivery by the IE of the Phase 1 Report, if the Phase 1 Report identifies no Deficiencies and makes no recommendations, which contains the statement contemplated in paragraph 3.1(d);
- b. 20 business days following the delivery by the IE of the Final Report, if the Final Report identifies no Deficiencies and makes no recommendations;
- c. 20 business days following the giving of the written notice to ASIC referred to in paragraph 7.5; or
- d. such other date agreed in writing between ASIC and AUSIEX.

8.3 In the event that:

- a. AUSIEX does not provide the Attestation to ASIC by the time required in paragraph 8.2; or
- b. ASIC considers (acting reasonably) that the Attestation is in terms which are unacceptable;

ASIC may notify AUSIEX in writing accordingly and provide AUSIEX with 20 business days (or such longer period as ASIC approves in writing) to respond. If AUSIEX fails to respond, ASIC may commence proceedings to enforce compliance with the Court's Orders.

9. Ending of the Compliance Programme

9.1 The Compliance Programme will end following compliance with all obligations under the Court's Order including compliance with the Attestation clause referred to in paragraph 8 above.

10. Other

10.1 The Phase 1 Report, any Final Report, any Phase 1 Remedial Action Plan and any Phase 2 Remedial Action Plan, including a list of concluded actions must be provided to the Leadership Team and Board of Directors of AUSIEX.

- 10.2 AUSIEX will, within a reasonable period of receiving a request from ASIC, provide all documents and information reasonably requested by ASIC from time to time for the purposes of assessing AUSIEX's compliance with the Compliance Programme, including any correspondence with the IE, other than any documents or information subject to a claim of legal professional privilege.
- 10.3 AUSIEX will be responsible for the costs of its compliance with the Compliance Programme.
- 10.4 AUSIEX and/or ASIC may apply to the Court for a variation of the terms of this Compliance Programme at any time and the Compliance Programme is subject to the Orders of the Court from time to time.

11. Non-compliance

- 11.1 AUSIEX must notify ASIC as soon as reasonably practicable and in any event within 10 business days after becoming aware of any failure to comply with the Orders of the Court.

12. Appointing the IE

- 12.1 AUSIEX must request ASIC to approve, within 30 business days of the date of the Orders of the Court, or within such longer period as may be agreed in writing by ASIC and AUSIEX:
- a. the appointment of the IE required for the purposes of the Compliance Programme which meets the criteria in paragraph 12.2 below;
 - b. the draft terms of engagement for that IE that meet the requirements of the Compliance Programme; and
 - c. if ASIC approves the nominated IE and draft terms of engagement following a request by AUSIEX under paragraph 12.1, AUSIEX undertakes to appoint the approved IE on the terms approved by ASIC, within 10 Business Days of receiving ASIC's approval, or within such longer period as may be agreed by ASIC and AUSIEX.
- 12.2 The IE nominated by AUSIEX:
- a. must have the necessary expertise, experience and operational capacity to perform the role contemplated by the Compliance Programme; and

- b. must be independent of AUSIEX, its related bodies corporate and its officers and will at all material times be capable of exercising objective and impartial judgement.
- 12.3 The appointment of the IE must be approved by ASIC in writing before the appointment takes effect (such approval not to be unreasonably withheld).
- 12.4 AUSIEX will provide ASIC with any information, explanation or documents it requests for the purposes of determining whether to approve the appointment of the IE, subject to a claim of legal professional privilege.
- 12.5 AUSIEX must advise ASIC of the expertise and any prior association of the proposed IE with AUSIEX, its related bodies corporate and officers at the time approval is sought from ASIC.

13. Appointing a new independent expert

- 13.1 If the IE advises AUSIEX and ASIC in writing that he or she is unable to continue his or her appointment, or if the engagement is terminated because of an actual or potential conflict of interest of the IE that arises during the engagement, AUSIEX must within 15 business days (or such longer period agreed in writing with ASIC) after the ending or termination of the engagement, appoint and engage another independent expert in accordance with paragraph 12 (with such appointment to take effect for the remaining duration of the Compliance Programme).

14. Terms of engagement

- 14.1 The terms of engagement for the IE will be approved by ASIC in writing before the engagement takes effect (such approval not to be unreasonably withheld) and once ASIC has provided its approval, the terms of engagement may only be varied with the agreement of ASIC (acting reasonably).
- 14.2 AUSIEX must ensure that the terms of engagement of the IE provided to ASIC for approval under paragraph 12.1:
- a. require AUSIEX to engage the IE to perform the tasks necessary to fulfil AUSIEX's obligations under the Compliance Programme;
 - b. require AUSIEX to permit the IE, subject to any claim of legal professional privilege, to the extent that it is reasonable having regard to the requirements of this

- Compliance Programme, to have access to its books, to interview present employees, contractors, agents and/or consultants and to consult with ASIC and disclose to ASIC any further information obtained by the IE in the course of carrying out the engagement for the purposes of the Compliance Programme;
- c. require AUSIEX to give the IE any information, document, or explanation reasonably requested by the IE in relation to any matter in any way connected with the reports required to be prepared by the IE for the purposes of the Compliance Programme (other than information, documents or explanations subject to a claim of legal professional privilege);
 - d. require AUSIEX to reasonably assist the IE in conducting the work required for the purposes of the Compliance Programme;
 - e. include a statement to the effect that the work of the IE is being carried out for AUSIEX and ASIC, and acknowledging that ASIC is relying on the work of the IE;
 - f. include a statement that, if requested by ASIC, ASIC is to be copied into all or some communications between AUSIEX and the IE;
 - g. require that the IE provide ASIC with a copy of the final versions of the Phase 1 Report and any Final Report at the same time as the final version of each report is provided to AUSIEX;
 - h. include an acknowledgement that in relation to the Phase 1 Report and any Final Report to be provided to ASIC and AUSIEX, ASIC may from time to time:
 - i. publicly refer to the content of the reports; and
 - ii. make public:
 - 1. a summary of the content of the reports; or
 - 2. a statement that refers to the content of the reports.
 - i. require that the IE provide ASIC with a copy of its proposed work and testing plan in relation to the assessment, review and testing required for the purposes of the Compliance Programme;
 - j. require that the IE must make any reasonable modifications to its work and testing plan requested by ASIC, provided ASIC has made such request within

10 business days after ASIC was provided with a copy of the proposed work and testing plan (or such longer period as agreed in writing by ASIC); and

- k. make provision for circumstances where an actual or potential conflict of interest arises in relation to the IE, including by requiring that the IE:
 - i. as soon as possible after becoming aware of an actual or potential conflict of interest that arises during the engagement, inform ASIC of the actual or potential conflict of interest;
 - ii. follow the reasonable directions of ASIC to effectively manage the actual or potential conflict of interest; and
 - iii. if the actual or potential conflict of interest cannot be effectively managed, follow the reasonable directions of ASIC to terminate the engagement.

15. ASIC public reporting

15.1 In relation to the Phase 1 Report, Final Report, any Phase 1 Remedial Action Plan, and any Phase 2 Remedial Action Plan arising from the IE's recommendations, ASIC:

- a. may issue a media release referring to the outcome, content, or compliance with any of those reports or plans; and
- b. may from time to time publicly refer to the content of the written reports or plans, and may make available for public inspection a summary of the content of the written reports or plans, or a statement that refers to the content of those report or plans.

15.2 In relation to the Compliance Programme, ASIC:

- a. may issue a media release on the Compliance Programme ordered by the Court, refer to any such order, and refer to the concerns of ASIC which led to the court-ordered Compliance Programme; and
- b. may from time to time publicly refer to the Compliance Programme.

15.3 In relation to paragraph 15.1 and 15.2, ASIC will delete, remove or redact any information prior to publication if (acting reasonably) ASIC is satisfied that the information:

- a. is personal information (as defined in the Privacy Act 1988 (Cth));
- b. should not be disclosed because it would be against the public interest to do so; or

- c. contains information that would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of AUSIEX.

16. Interpretation of Compliance Programme

- 16.1. In the event that AUSIEX and the IE are unable to agree on the interpretation of any matter the subject of this Compliance Programme, AUSIEX and the IE must use reasonable efforts to resolve the disagreement and if unable to do so, may request a meeting with ASIC to discuss the matter in an effort to resolve the disagreement. If ASIC requests, each of AUSIEX and the IE are to provide ASIC with a written submission as to the matter in dispute 3 Business Days before any such meeting.

Schedule A

The Reported Conduct is:

- a. breaches of client money and trust account requirements by AUSIEX, as set out in paragraphs [172] to [200] of the SOAFAC;
- b. inaccuracies in trade confirmations sent, or failure to send trade confirmations as required, by AUSIEX, as set out in paragraphs [336] to [430] of the SOAFAC;
- c. best execution obligations failures by AUSIEX, as set out in paragraphs [488] to [491] of the SOAFAC; and
- d. failure to adhere to regulatory data requirements by AUSIEX, as set out in paragraphs [526] to [536] of the SOAFAC.

REASONS FOR JUDGMENT

ABRAHAM J:

1 The defendants, Commonwealth Securities Limited (CommSec) and Australian Investment
Exchange Limited (AUSIEX), provide financial services to clients, including services that
allowed clients to trade securities and maintain a trading account online. Clients of CommSec
could make trades in equities, exchange traded options and other financial products.

2 Each were, at all relevant times, subsidiaries of the Commonwealth Bank of Australia Limited
(CBA). CommSec and AUSIEX each is the holder of an Australian Financial Services Licence
(AFSL) and is a market participant of the ASX Limited (the ASX) and Chi-X Limited (Chi-X)
financial markets. As participants of the ASX and Chi-X, CommSec and AUSIEX were subject
to the Market Integrity Rules (see *Corporations Act 2001* (Cth) (Corporations Act) s
798H(1)(b)).

How the plaintiff characterised the defendants' contraventions

3 This proceeding is characterised by a high degree of cooperation between the parties. The
defendants largely agree with the way in which the plaintiff, the Australian Securities and
Investments Commission (ASIC), has characterised their contraventions of obligations held
under their AFSL, pursuant to the Market Integrity Rules and consequently, the Corporations
Act (and additionally for CommSec, the *Australian Securities and Investments Commission
2001* (Cth)) (ASIC Act). In this context, it is convenient to draw upon the plaintiff's
submissions and the statement of agreed facts and contraventions (SOAFAC) to explain the
legal context in which the contraventions arise and the nature of the contraventions, before I
recall the parties' submissions and turn to consider whether the contraventions have been
established and the appropriate remedies to flow from these.

4 Between 1 January 2017 and 14 August 2020, CommSec and AUSIEX provided a series of
notifications to ASIC in relation to: incorrect brokerage fees charged by CommSec (Brokerage
Issues); breaches of client money requirements and trust account reconciliation rules by
CommSec and AUSIEX (Client Money Issues); a failure to send trade confirmations as required
and failure to send accurate trade confirmations by each of CommSec and AUSIEX (Trade
Confirmations Issues); inadequate automated order processing filters by CommSec to
determine no change in beneficial ownership (AOP Issue); a failure to comply with best
execution obligations by CommSec and AUSIEX (Best Execution Issue); trading of warrants

on CommSec accounts without a valid Warrant Agreement Form on record (Warrant Agreement Issue); and failure to adhere to regulatory data requirements by CommSec and AUSIEX (Regulatory Data Issue) (collectively referred to as the Reported Conduct).

5 It is common ground between the parties that CommSec contravened:

- (1) s 798H of the Corporations Act, as set out at paragraph [4] of the Amended Originating Process;
- (2) s 12DB of the ASIC Act, as set out at paragraph [3] of the Amended Originating Process; and
- (3) s 912A(1)(a) of the Corporations Act, as set out at paragraph [1] of the Amended Originating Process.

6 It is also common ground between the parties that AUSIEX contravened:

- (1) s 798H of the Corporations Act, as set out at paragraph [5] of the Amended Originating Process; and
- (2) s 912A(1)(a) of the Corporations Act, as set out at paragraph [2] of the Amended Originating Process.

7 The Reported Conduct spanned the period from 1 August 2010 to 18 June 2020 for CommSec and from 6 May 2010 to 27 November 2019 for AUSIEX, and related to failures across multiple systems, processes and business areas. Due to limitation periods, declarations and penalties are sought in relation to conduct occurring on or after 1 March 2015 (the Limitation Date), although conduct occurring prior to that date is referenced to contextualise later conduct or to establish a continuing course of conduct.

8 The contravening conduct concerns a range of services and issues. There is not a single cause of all of the offending conduct. Nevertheless, there are common features across the conduct. The issues arose from failures such as information technology system coding or systems issues, human error, and/or data entry errors. The number, breadth and duration of the Reported Conduct when viewed in totality is significant and indicates the entities did not have adequate systems and processes in place to ensure compliance with their relevant obligations under their AFSLs and pursuant to the Market Integrity Rules and consequently, the Corporations Act (and additionally for CommSec, the ASIC Act).

9 I note that CommSec has been before the Markets Disciplinary Panel (MDP) for contraventions of the Market Integrity Rules on seven previous occasions since 2012, receiving fines totalling \$1,055,000. It has also been subject to a Court Enforceable Undertaking in 2013 for client money and trust account failings.

10 That said, ASIC does not allege, and there is no evidence to indicate that, any of the contraventions the subject of these proceedings were deliberate, or that the conduct constituting the contraventions was conduct of senior management of either CommSec or AUSIEX. Both defendants have cooperated with ASIC in relation to these proceedings, expressed contrition for the Reported Conduct, taken steps to address the issues the subject of the Reported Conduct, and to remediate any client detriment. The defendants have also agreed to ongoing compliance programs. These common factors relevant to the Reported Conduct are referred to as the 'Mitigating Factors' and ASIC has also taken these into account by submitting that a 30% discount to the headline penalty figures proposed is appropriate.

11 I note that while there appear to be some ongoing issues in relation to matters similar to the Reported Conduct, each of the parties has agreed to enter into detailed compliance plans to ensure any outstanding issues are addressed.

12 This proceeding relates to the relief sought as a result of the admitted contravention.

13 As will be readily apparent from even that brief description, there has been significant co-operation by parties, and the matter proceeded on the basis of a very detailed SOAFAC. In those circumstances it is unnecessary to recite in detail those facts, which I accept, and I attach that statement to these reasons as Annexure A. I will only refer to some brief aspects.

The proposed relief

14 ASIC proposes pecuniary penalties in respect of the admitted contraventions in the following amounts (after application of the 30% discount for co-operation):

- (1) \$20 million in respect of CommSec; and
- (2) \$7.12 million in respect of AUSIEX.

15 Each defendant agreed to the overall penalty amounts proposed by ASIC. CommSec and AUSIEX have also agreed to the form of compliance plans attached at Schedule 1 and Schedule 2 to the orders I will make.

16 As explained in the reasons below, having considered the facts and circumstances, in light of
the relevant legal principles, I agree that the proposed declarations, penalties and orders
appropriately reflect the seriousness of the contraventions.

Contravention provisions – the legal context

17 As there is no relevant controversy between the relevant applicable principles, I have taken the
below summary, in large part, as correctly outlined by the parties in its submissions.

Section 798H of the Corporations Act

18 Participants in licensed markets “must comply with the market integrity rules”: s 798H(1) of
the Corporations Act. ASIC is granted power to make market integrity rules under s 798G of
the Corporations Act. Prior to 2017, ASIC had a series of market-specific rule-books in
operation, including, relevantly, the ASX Rules and the Exchange Markets Rules. From 7 May
2018, the market specific rules were replaced with a common set of market integrity rules for
securities markets (the Securities Markets Rules).

19 Section 798H(1) is a civil penalty provision. The imposition of a penalty is discretionary: s
1317G. In determining the appropriate pecuniary penalty, the Court must take into account all
relevant matters, including (s 1317G(6)):

- (1) the nature and extent of the contravention;
- (2) the nature and extent of any loss or damage suffered because of the contravention;
- (3) the circumstances in which the contravention took place; and
- (4) whether the person has previously been found by a court (including a court of a foreign
country) to have engaged in similar conduct.

20 If a Court is satisfied that a person has contravened a civil penalty provision, “it must make a
declaration of contravention”: s 1317E. In contrast to the pecuniary penalty, this is a mandatory
requirement: *Australian Securities and Investments Commission v Warrenmang* [2007] FCA
973; (2007) 63 ACSR 623 at [31].

21 By virtue of the time period over which they occurred, the contraventions concern both the
Securities Markets Rules and equivalent provisions under the earlier ASX Rules and Exchange
Market Rules. The significant difference in the transition in rules, is in the maximum penalty
amounts applicable to Reported Conduct which occurred wholly on or after 13 March 2019:

Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth) (Amendment Act).

22 The Market Integrity Rules (including the Securities Markets Rules, applicable to contraventions on and from 13 March 2019) contain within them tiered maximum penalty amounts in respect of different rules. However, those maximums only apply in respect of conduct that occurred, or commenced, prior to 13 March 2019, since the Amendment Act removed s 798G(2) of the Corporations Act (Amendment Act s 48), which had provided ASIC with the power to stipulate a penalty amount in respect of a contravention of the Market Integrity Rules.

23 The applicable penalty regime for contravention of the Market Integrity Rules after 13 March 2019 is set out in s 1317G(4) of the Corporations Act.

24 As a consequence, the maximum penalty for each alleged contravention is:

- (1) if the conduct occurred or commenced prior to 13 March 2019 – the maximum penalty specified in the relevant rule (being one of \$1 million, \$100,000 and \$20,000): see former ss 798G(1C)-(1D) and 798G(2) of the Corporations Act;
- (2) if the conduct occurred wholly on or after 13 March 2019: approximately \$525 million in respect of each contravention by CommSec; and \$525 million in respect of each contravention by AUSIEX.

Section 12DB of the ASIC Act

25 This provision addresses false or misleading representations. To prove a contravention, it must be established that:

- (1) the defendant made a representation;
- (2) which was false or misleading about one or several matters listed in sub-s (1);
- (3) which was made in trade or commerce; and
- (4) which was made:
 - (a) in connection with the supply or possible supply of financial services; or
 - (b) in connection with the promotion by any means of the supply or use of financial services.

26 For the period relevant to the admitted contravention of s 12DB, being 1 March 2015 to 26 March 2018, the ASIC Act did not contain any provision which specifically gave the Court power to make declarations: (c.f. s 12GBA of the current ASIC Act). The Court’s power to make declarations in relation to contraventions of s 12DB of the ASIC Act for that period is found in s 21 of the *Federal Court of Australia Act 1976* (Cth) (FCA Act).

27 Pecuniary penalties for contraventions for the period relevant to the admitted contravention were dealt with in s 12GBA of the ASIC Act, which relevantly provided that, if the Court is satisfied that a person has contravened s 12DB, “the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each act or omission by the person to which the section applies, as the Court determines to be appropriate.” In determining the appropriate pecuniary penalty, the Court must have regard to all relevant matters including (s 12GBA(2)):

- (1) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission;
- (2) the circumstances in which the act or omission took place;
- (3) whether the person has previously been found by the court in proceeding under subdivision G (of Pt 2, Div 2), to have engaged in any similar conduct.

28 For each contravention of s 12DB, the maximum penalty payable by a body corporate under s 12GBA(3) of the ASIC Act is 10,000 penalty units. Over the relevant period, the value of a penalty unit has been:

- (1) between 1 March 2015 and 30 July 2015, \$170;
- (2) between 31 July 2015 and 30 June 2017, \$180; and
- (3) from 1 July 2015 to 26 March 2018, \$210.

29 Therefore, the maximum penalty for a contravention of s 12DB during the relevant applicable period has ranged from \$1.7 million to \$2.1 million. A contravention of s 12DB occurs each time the relevant false or misleading representation is made to a person. In cases involving representations made on a website (relevant to the contraventions of s 12DB in these proceedings), a representation is made each time that the relevant content on the website is accessed and viewed by a user of the website: *Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2)* [2016] FCA

698 at [12]; *Australian Securities and Investments Commission v Gallop International Group Pty Ltd* [2019] FCA 1514; (2019) 138 ACSR 395 at [288].

Section 912A(1)(a) of the Corporations Act

30 This provision provided that a financial service licensee must do all things necessary to ensure that the financial services are provided “efficiently, honestly and fairly”. This applied to each defendant in respect of the services provided by that entity.

31 In *Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq)* [2012] FCA 414; (2012) 88 ACSR 206 at [69]-[70], Foster J observed in relation to s 912A(1)(a):

[69] In support of the relief which it seeks based upon s 912A(1)(a) of the Corporations Act, ASIC made the following submissions:

- (a) The words “efficiently, honestly and fairly” must be read as a compendious indication meaning a person who goes about their duties efficiently having regard to the dictates of honesty and fairness, honestly having regard to the dictates of efficiency and fairness, and fairly having regard to the dictates of efficiency and honesty: *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661 at 672. ([126])
- (b) The words “efficiently, honestly and fairly” connote a requirement of competence in providing advice and in complying with relevant statutory obligations: *Re Hres and Australian Securities and Investments Commission* (2008) 105 ALD 124 at [237]. They also connote an element not just of even handedness in dealing with clients but a less readily defined concept of sound ethical values and judgment in matters relevant to a client’s affairs: *Re Hres and Australian Securities and Investments Commission* (2008) 105 ALD 124 at [237]. ([127])
- (c) The word “efficient” refers to a person who performs his duties efficiently, meaning the person is adequate in performance, produces the desired effect, is capable, competent and adequate: *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661 at 672. Inefficiency may be established by demonstrating that the performance of a licensee’s functions falls short of the reasonable standard of performance by a dealer that the public is entitled to expect: *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661 at 679. ([128])
- (d) It is not necessary to establish dishonesty in the criminal sense: *R J Elrington Nominees Pty Ltd v Corporate Affairs Commission (SA)* (1989) 1 ACSR 93 at 110. The word “honestly” may comprehend conduct which is not criminal but which is morally wrong in the commercial sense: *R J Elrington Nominees Pty Ltd v Corporate Affairs Commission (SA)* (1989) 1 ACSR 93 at 110. ([129])
- (e) The word “honestly” when used in conjunction with the word “fairly”

tends to give the flavour of a person who not only is not dishonest, but also a person who is ethically sound: *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661 at 672. ([130])

[70] The submissions which I have extracted at [69] above are correct and I accept them.

32 Foster J’s statement was cited with approval in, for example: *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790 at [50]; *Australian Securities and Investments Commission v Avestra Asset Management Limited (in liq)* [2017] FCA 497; (2017) 348 ALR 525 at [191]; *Australian Securities and Investments Commission v Cassimatis (No 8)* [2016] FCA 1023; (2016) 336 ALR 209 at [674]; *Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* [2018] FCA 751; (2018) 266 FCR 147 at [2347]; *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; (2020) 275 FCR 57 at [505] and *Australian Securities and Investments Commission v MLC Nominees Pty Ltd* [2020] FCA 1306; (2020) 147 ACSR 266 at [50].

33 ASIC also referred to the recent obiter comments of O’Byrne J in *ASIC v Westpac Securities* [2019] FCAFC 187; (2019) 272 FCR 170 at [426]:

With respect, it is not apparent that either reason provides a sound basis for reading the phrase, as it appears in s 912A(1)(a) of the Act, compendiously in the manner suggested by his Honour [referring to Young J’s construction of s 912A in *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661]. In particular, it is not apparent why a licensee cannot comply with each of the three obligations, efficiently, honestly and fairly, applying the ordinary meaning of each word. One of the meanings of the word “efficiently”, and the meaning well adapted to the statutory provision, is competent, capable and having and using the requisite knowledge, skill and industry: cf *ASIC v Camelot* at [69(c)]. The word “honestly” includes dishonesty in the criminal sense but may also comprehend conduct which is not criminal but which is morally wrong in the commercial sense: *RJ Elrington Nominees Pty Ltd v Corporate Affairs Commission (SA)* (1989) 1 ACSR 93 at 110. The word “fair” as used in s 912A(1)(a) has not received detailed judicial consideration. However, it seems to me that there is no reason why it cannot carry its ordinary meaning which includes an absence of injustice, even-handedness and reasonableness. As is the case with legislative requirements of a similar kind, such as provisions addressing unfair contract terms, the characterisation of conduct as unfair is evaluative and must be done with close attention to the applicable statutory provision: cf *Paciocco v Australia and New Zealand Banking Group Ltd* (2015) 236 FCR 199 at [364]. It seems to me that the concepts of efficiently, honestly and fairly are not inherently in conflict with each other and that the ordinary meaning of the words used in s 912A(1)(a) is to impose three concurrent obligations on the financial services licensee: to ensure that the financial services are provided efficiently, and are provided honestly, and are provided fairly.

34 As O’Byrne J stated at [424], immediately before those observations, the point was not the subject of argument. Allsop CJ reserved “for an occasion where the matter was fully argued

the question whether the phrase is compendious and, if it is, its meaning and application”: at [170]. I note that there was no suggestion by ASIC that O’Byan J’s dicta had changed the law.

35 As ASIC submitted, ultimately, the distinction may be of limited practical impact, as was recognised by Young J who originally articulated the composite approach in *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661, as he observed that “in the long run it does not seem to me to much matter whether one reads the words cumulatively or disjunctively, because unless a licence holder possesses the three attributes whether as one package or as three separate parcels, the Commission can revoke his licence”. I note that the point was not fully argued before me and I do not think it is necessary to add anything further here.

Principle applicable to the relief sought

Declarations

36 As previously observed, s 1317E governs the making of declarations in respect of the acknowledged contraventions of s 798H of the Corporations Act, once the Court is satisfied that a contravention has been established.

37 The admitted contraventions of s 912A(1)(a) of the Corporations Act commenced prior to that provision becoming a civil penalty provision on 13 March 2019. The contraventions with respect to s 12DB of the ASIC Act took place prior to the introduction of a specific power to make declarations for contraventions of the ASIC Act.

38 The Court has a discretionary power to make declarations in respect of the contraventions of s 912A(1)(a) of the Corporations Act and s 12DB of the ASIC Act pursuant to s 21 of the FCA Act: *Australian Securities and Investments Commission v Fisher & Paykel Customer Services Pty Ltd* [2014] FCA 1393 at [50]. The Court’s power to grant declaratory relief pursuant to s 21 of FCA Act “is a very wide one” and the court is “limited only by its discretion”: *Seven Network Ltd v News Ltd* [2009] FCAFC 166; (2009) 182 FCR 160 at [1016]. Three requirements need to be satisfied before making declarations: (1) the question must be a real and not a hypothetical or theoretical one; (2) the applicant must have a real interest in raising it; and (3) there must be a proper contradictor. Other factors relevant to the exercise of the discretion include: (a) whether the declaration will have any utility; (b) whether the proceeding involves a matter of public interest: *ASIC v Pegasus Leverages Options Group Pty Ltd* [2002] NSWSC 310; (2002) 41 ACSR 561 at 571; and (c) whether the circumstances call for the

marking of the Court’s disapproval of the contravening conduct: *Australian Securities and Investments Commission v Monarch FX Group Pty Ltd* [2014] FCA 1387; 103 ACSR 453 at [63]; *Australian Securities and Investments Commission v Stone Assets Management Pty Ltd* [2012] FCA 630; (2012) 205 FCR 120 at [42].

Pecuniary penalties

39 The purpose of a civil penalty is primarily protective, in promoting the public interest in compliance by deterrence from further contravening conduct: *Australian Building and Construction Commission v Pattinson* [2022] HCA 13; (2022) 399 ALR 599 at [15]. A penalty of appropriate deterrent effect “must be fixed with a view to ensuring that the penalty is not such as to be regarded by [the] offender or others as an acceptable cost of doing business”: *Pattinson* at [17] citing *Singtel Optus Pty Ltd v Australian Competition and Consumer Commission* [2012] FCAFC 20; (2012) 287 ALR 249 at [62].

40 The assessment of penalty of appropriate deterrent value will have regard to a number of factors including: (1) the nature and extent of the contravening conduct; (2) the amount of loss or damage caused; (3) the circumstances in which the conduct took place; (4) the size of the contravening company; (5) the degree of power it has, as evidenced by its market share and ease of entry into the market; (6) the deliberateness of the contravention and the period over which it extended; (7) whether the contravention arose out of the conduct of senior management or at a lower level; (8) whether the company has a corporate culture conducive to compliance, as evidenced by educational programs or other corrective measures in response to an acknowledged contravention; and (9) whether the company has shown a disposition to cooperate with the authorities responsible for the enforcement of the Act in relation to contravention: *Pattinson* at [18]. These are not to be considered to be a rigid list of factors to be ticked off: *Pattinson* at [19], but rather are to inform a multifactorial investigation that leads to a result arrived at by a process of “instinctive synthesis” addressing the relevant considerations: *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181; (2016) 340 ALR 25 at [44].

41 It is recognised that ordinarily separate contraventions arising from separate acts should attract separate penalties. However where separate acts give rise to separate contraventions which are inextricably interrelated, they may be regarded as a “course of conduct” for penalty purposes: *Australian Competition and Consumer Commission v Yazaki Corporation* [2018] FCAFC 73; (2018) 262 FCR 243 at [234]. This avoids double-

punishment for those parts of the legally distinct contraventions which involve overlap in wrongdoing: see for example, *Construction, Forestry, Mining and Energy Union v Cahill* [2010] FCAFC 39; (2010) 269 ALR 1 at [39] and [41]. Whether the contraventions should be treated as a single course of conduct is a question of fact having regard to all of the circumstances of the case.

42 The principle of totality requires the Court to make a “final check” of the penalties to be imposed on a wrongdoer, considered as a whole, to ensure that the total penalty does not exceed what is proper for the entire contravening conduct: *Australian Competition and Consumer Commission v Australian Safeway Stores Pty Ltd* [1997] FCA 450; (1997) 145 ALR 36 at 53, citing *Mill v The Queen* [1988] HCA 70; (1988) 166 CLR 59.

43 The principles to be applied in considering a jointly proposed penalty were considered in *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; (2015) 258 CLR 482 (*DFWBII*), where the majority observed at [46]:

[T]here is an important public policy involved in promoting predictability of outcome in civil penalty proceedings and that the practice of receiving and, if appropriate, accepting agreed penalty submissions increases the predictability of outcome for regulators and wrongdoers. As was recognised in *Allied Mills* and authoritatively determined in *NW Frozen Foods*, such predictability of outcome encourages corporations to acknowledge contraventions, which, in turn, assists in avoiding lengthy and complex litigation and thus tends to free the courts to deal with other matters and to free investigating officers to turn to other areas of investigation that await their attention.

44 Further, their Honours said at [58]:

... Subject to the court being sufficiently persuaded of the accuracy of the parties’ agreement as to facts and consequences, and that the penalty which the parties propose is *an* appropriate remedy in the circumstances thus revealed, it is consistent with principle and ... highly desirable in practice for the court to accept the parties’ proposal and therefore impose the proposed penalty.

45 Those observations about the desirability of acting upon agreed penalty submissions were made in the context of a broader recognition that as a civil litigant in civil proceedings, civil penalties are but one of numerous forms of relief which regulators can pursue, and it is entirely orthodox for regulators to make submissions as to that relief: see *DFWBII* at [24], [57]-[59], [63], [103], [107]. Those principles to be applied in considering a jointly proposed penalty were recently considered in *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* [2021] FCAFC 49; (2021) 284 FCR 24 at [124]-[131], referring to *Fair Work, NW Frozen Foods Pty Ltd v Australian Competition Commission*

[1996] FCA 1134; (1996) 71 FCR 285 and *Minister for Industry, Tourism and Resources v Mobil Oil Australia Pty Ltd* [2004] FCAFC 72; (2004) ATPR 41-993. A number of points were highlighted including: *first*, the Court must be satisfied that the penalty proposed by the parties is appropriate: at [125]; *second*, if persuaded of the accuracy of the parties' agreement as to facts and that the proposed penalty is an appropriate remedy, it is highly desirable for the Court to accept the proposal: at [126]; *third*, in considering whether the proposed penalty is appropriate, it is necessary to bear in mind that there is no single appropriate penalty, but rather a permissible range. The proposed penalty may be "an" appropriate penalty if it falls within that range: at [127]; *fourth*, the Court should generally recognise that it most likely was a result of compromise and pragmatism on the part of the regulator, and while the regulator must estimate the penalty necessary to achieve deterrence, the Court must assess the proposed penalty on its merits, being wary of the possibility that the regulator may have been too pragmatic: at [129]; *fifth*, the Court's task is not limited to simply determining whether the jointly proposed penalty is within the permissible range, though that might be expected to be a highly relevant and perhaps determinative consideration. The overriding statutory directive is for the Court to impose a penalty which is determined to be appropriate having regard to all relevant matters: at [131].

46 ASIC submitted that at least in so far as pecuniary penalties in respect of contraventions of the Market Integrity Rules and s 798H is concerned, there has been only one other civil penalty case brought to date in respect of that provision of the Corporations Act, and that involved an agreed penalty for conduct occurring prior to the Amendment Act.

47 As noted above (at [21]-[22]), there has been a significant increase in maximum penalties for comparable offences under the Market Integrity Rules where contraventions occur wholly on or after 13 March 2019. The theoretical maximum penalty amounts for the Reported Conduct are in some instances many times the assets of the entities involved. While penalties must be set at appropriate levels to address the goals of specific and general deterrence, ASIC accepted that the maximum theoretical penalty amounts in these proceedings are a disproportionate yardstick when viewed against the technical nature of the underlying offences here, particularly where there are many contraventions of a similar nature. Notwithstanding that, the legislative amendments brought about by the Amendment Act reflect a clear intention that penalties for contraventions of s 798H of the Corporations Act be increased above the penalties applicable prior to that date. ASIC submitted that the penalty amounts suggested by ASIC are a genuine attempt to reflect that clear legislative intention of the Parliament.

Compliance plans

48 Section 1101B of the Corporations Act is broad enough to empower the making of an order requiring a contravener to establish a compliance program tailored to remedying the contraventions established. In *ASIC v Westpac Banking Corporation (No 3)* [2018] FCA 1701; (2018) 131 ACSR 585 at [183], Beach J noted three things in relation to the power:

First and generally speaking, one should not read provisions conferring jurisdiction on, or granting powers to, a court by making implications or imposing limitations which are not found in the express words. Second, it is no objection to an order requiring a compliance program to be established that it is in a form of mandatory injunction; I would note that the illustrative orders set out in s 1101B(4) contain examples that are mandatory in nature. Third, what the court "thinks fit" is not at large. The power must be exercised judicially having regard to the text, context and purpose of the Corporations Act. Given that this is a power that must relate to a contravention, a compliance program can be readily accommodated within its scope as an order designed to ensure that a contravention of a similar kind does not occur again. And given that one of the purposes of the civil penalty regime is deterrence, a compliance program can address specific deterrence.

49 The compliance program must have a connection with the contravening conduct that has been found: *ASIC v Westpac Banking Corporation (No 3)* at [186], citing *ACCC v Z-Tek Computer Pty Ltd* [1997] FCA 871; (1997) 78 FCR 197 at 205.

50 It must strike the appropriate balance between prescription, so as to avoid uncertainty, and over particularity, so as to avoid unworkability: *ASIC v Westpac Banking Corporation (No 3)* at [187] citing *ACCC v Virgin Mobile Australia Pty Ltd (No 2)* [2002] FCA 1548 at [24].

Evidence

51 As noted above, this matter is characterised by a high degree of cooperation between the parties and proceeded largely by way of a detailed statement of agreed facts and contraventions, which, as stated above, I accept. In addition, ASIC relied on one affidavit, and CommSec and/or AUSIEX relied on three affidavits. All four affidavits were read without objection and no deponents were required for cross-examination.

ASIC's affidavit

52 The affidavit read by ASIC was the affidavit of Anita McKenzie verified 27 May 2021 (McKenzie Affidavit). Ms McKenzie was a Senior Manager in the Markets Enforcement team of ASIC, and pursuant to s 102 of the ASIC Act had been delegated certain functions and powers including functions and powers under Pt 3 of the ASIC Act relating to ASIC's investigation and information gathering.

53 Ms McKenzie explained that on 27 May 2019, an investigation was commenced under s 13 of the ASIC Act in relation to suspected contraventions by CommSec and AUSIEX of the Corporations Act and the Market Integrity Rules. The investigation was expanded on 16 October 2019 to include suspected contraventions of the ASIC Act and other market integrity rules.

54 Ms McKenzie then described a notice of direction that ASIC issued to CommSec pursuant to s 912C(1) of the Corporations Act on 26 August 2019, requiring CommSec to provide a written statement of the details of all complaints or queries from customers about being incorrectly charged brokerage rates / fees. The McKenzie affidavit annexes the relevant portions of CommSec's response to the notice of direction.

55 The McKenzie affidavit next addresses subsequent breach notifications made by CommSec and AUSIEX subsequent to the period covered by the SOAFAC. The relevant parts of these breach notifications are annexed to her affidavit. Finally, the affidavit annexes financial statements and reports for CommSec and AUSIEX for the 2019-20 financial year.

CommSec's and/or AUSIEX's affidavits

56 The first affidavit read by AUSIEX was an affidavit of Eric Blewitt verified on 20 August 2021. Mr Blewitt was the Chief Executive Officer and a director of AUSIEX, and made the affidavit on AUSIEX's behalf. In his position, during all relevant periods, Mr Blewitt was a Responsible Manager for AUSIEX, being a person nominated by an AFSL licensee who has direct responsibility for significant day-to-day decisions in their regulatory environment.

57 Mr Blewitt noted that since 13 August 2021, AUSIEX is no longer owned by the CBA. His affidavit explained AUSIEX's governance structures both prior to and subsequent to its separation from the CBA group. He also explained the structure of teams that existed to manage compliance within AUSIEX and the improvements to compliance systems that AUSIEX has already made, including implementing Project Rampart and Project Umbrella which were developed before the separation from the CBA group and are discussed further at [73] below.

58 Mr Blewitt also described the remediation work that has been undertaken by AUSIEX since separating from the CBA group to ensure compliance with obligations relating to aspects of the Reported Conduct including the handling of client monies, issuing of trade confirmations to customers, monitoring of best execution and the provision of regulatory data to market operators. Mr Blewitt said he considered that ensuring AUSIEX has in place systems, processes

and controls to ensure compliance with those obligations and avoid repetition of AUSIEX's Reported Conduct to be of the highest importance. Mr Blewitt highlighted that he had emphasised the importance of compliance at a Board Meeting of AUSIEX and that, in this context, he anticipated that any future breaches would be escalated to him in addition to AUSIEX following the formal processes under the company's Incident and Breach Policy.

59 The second affidavit read by CommSec and AUSIEX was an affidavit of Michael Vacy-Lyle verified on 20 August 2021. Mr Vacy-Lyle was the Group Executive for Business Banking at the CBA and made the affidavit on behalf of both CommSec and AUSIEX. Since 1 February 2020, Mr Vacy-Lyle has been one of the accountable persons within the meaning of s 5 of the *Banking Act 1959* (Cth) of the CBA. In that capacity, he has had senior executive responsibility for the management or control of the Business Banking business, which includes CommSec and included AUSIEX prior to 3 May 2021. Mr Vacy-Lyle has chaired and participated in a number of committees across the CBA group that focus on compliance and also has attended CommSec's board meetings since 18 February 2020, where he would review packs providing details on the Reported Conduct and remediation projects in relation to these.

60 Mr Vacy-Lyle's affidavit admitted, and apologised on behalf of CommSec and AUSIEX for, the Reported Conduct. He emphasised that the contraventions should not have occurred, took place over an extended period of time, had the potential to undermine market integrity, were serious and occurred despite previous proceedings before the MDP. Mr Vacy-Lyle also apologised for the failures to report contraventions in a timely manner, and for the financial detriment or potential financial detriment that was caused to clients by the Brokerage, Best Execution and Warrant Agreement issues. Mr Vacy-Lyle accepted that in light of the previous proceedings before the MDP, it was appropriate for ASIC to bring civil penalty proceedings in this court to achieve deterrence.

61 Mr Vacy-Lyle highlighted that CommSec and AUSIEX had proactively taken steps to remediate clients who suffered or may have suffered financial detriment, and undertaken significant work and restructuring directed at remedying the causes of client monies and trade confirmation issues and generally to improve compliance and risk management.

62 The third affidavit read by the defendants was an affidavit of David Smith verified on 28 August 2021. Mr Smith was the Head of Compliance since around September 2014 at CommSec and he makes the affidavit on behalf of CommSec and AUSIEX. As the Head of Compliance, Mr Smith's responsibilities generally included leading a team of compliance

advisers providing compliance support to the CommSec and (prior to 3 May 2021) AUSIEX businesses to ensure they are aware of and comply with the relevant compliance rules, regulations, industry codes and organisational requirements.

63 Mr Smith's affidavit provided significant detail on the structure of the teams, policies, procedures and controls at CommSec designed to ensure compliance. Mr Smith also described relevant changes to these teams since the Limitation Date and enhancements that have been made to issue and incident management procedures across CommSec and the CBA group more broadly. He indicated that CommSec has established a separate team to co-ordinate implementation of the proposed court-ordered compliance plan.

64 Mr Smith then described how CommSec and AUSIEX's systems and processes applicable to the contraventions in the SOAFAC operated. He explained how the companies detected each category of the Reported Conduct, and how they internally escalated and then externally reported these issues.

65 Finally, Mr Smith addressed antecedent conduct engaged in by CommSec and AUSIEX prior to the Reported Conduct and the work undertaken by them to address that conduct. This included conduct that resulted in CommSec and AUSIEX giving an enforceable undertaking under s 93AA of the ASIC Act and conduct that resulted in CommSec and AUSIEX being parties to proceedings before the MDP.

The contraventions and the defendants' response

66 As explained above, this matter proceed by way of a detailed SOAFAC.

67 Each of CommSec and AUSIEX provided financial services to clients, including services that allowed clients to trade securities and maintain a trading account online. Most of the trades were in equities (with CommSec issuing to clients 4,588,620 equities trade confirmations in 2015, and 6,483,457 in 2019 - noting that a trade confirmation may relate to multiple trades; AUSIEX issuing 1,653,906 in 2015 and 1,871,664 in 2019), but there were also trades in exchange traded options and other financial products.

68 By reason of s 798H of the Corporations Act, in providing many of these services, CommSec and AUSIEX as participants in the relevant markets were obliged to comply with market integrity rules made by ASIC under s 798G of the Corporations Act, including the Market Integrity Rules.

69 The contraventions of the Corporations Act with which this proceeding is concerned arose in the context of CommSec and AUSIEX providing brokering and execution services to their clients, many of whom were retail clients. Clients generally placed orders online and the systems and records used to charge for the services provided and to manage related matters such as the handling of client monies and the discharge of related regulatory obligations were largely dependent on information technology systems, including (particularly in relation to client monies) third party provided systems.

70 The contravening conduct concerns a range of services and issues.

71 As identified in [4] above, the contraventions, generally speaking, fall into eight categories:

- (1) Brokerage Issues (CommSec);
- (2) Client Money Issues (CommSec and AUSIEX);
- (3) Trade Confirmations Issues (CommSec and AUSIEX);
- (4) AOP Issue (CommSec);
- (5) Best Execution Issue (CommSec and AUSIEX);
- (6) Warrant Agreement Issue (CommSec);
- (7) Regulatory Data Issue (CommSec and AUSIEX);
- (8) Failure to provide services “efficiently, honestly and fairly”: s 912A(1)(a) of the Corporations Act;

72 The only issue which resulted in any actual financial detriment to customers was the Brokerage Issue, although potential financial detriment to customers may have arisen from the Best Execution Issue and Warrant Agreement Issue. To the extent any clients of CommSec or AUSIEX actually or potentially suffered a financial detriment by reason of the contravening conduct in relation to the Brokerage Issue, the Best Execution Issue and the Warrant Agreement Issue, CommSec and AUSIEX have provided compensation, including interest. With respect to the balance of the issues, CommSec and AUSIEX accept non-compliance may also give rise to potential client detriment (albeit not financial detriment) or market integrity implications. Other than in relation to the Brokerage Issue, ASIC does not allege, and there is no evidence to indicate that, any of the issues resulted in any revenue or direct benefit being derived by CommSec or AUSIEX. However, CommSec acknowledged it is possible they may have obtained benefits as a result of the AOP Issue and Best Execution Issue, in the form of trades placed that may otherwise not have been placed.

73 CommSec and AUSIEX have taken action directed toward remedying the causes of each of the issues giving rise to the contravening conduct. This has included changes to information technology systems, introduction of greater human oversight and controls, and changes to policies and procedures. CommSec and AUSIEX have entered into agreements with third-party providers which require them to provide further assurance that their services comply with the specifications required by CommSec and AUSIEX. More specifically, following identification of the Client Money Issues, CommSec and AUSIEX established Project Rampart. Following identification of the Trade Confirmation Issues, CommSec and AUSIEX established Project Umbrella. These projects are explained further in Annexure A. Since the establishment of those projects, ASIC has received some further breach reports in respect of both Client Money Issues and Trade Confirmations Issues, including as a result of the work undertaken as part of those projects.

74 CommSec and AUSIEX accept that there were inadequacies in their processes and procedures to ensure compliance with the relevant obligations. While they did have in place processes addressing operational risk and compliance, these processes were not sufficient to ensure compliance with the relevant regulatory obligations.

75 As noted at [10] above, ASIC does not allege, and there is no evidence to indicate that, any of the contraventions were deliberate, or that the conduct constituting the contraventions was conduct of senior management.

76 CommSec and AUSIEX have cooperated with ASIC in relation to these issues and voluntarily taken steps to address the issues and to remediate any client detriment. In some instances, identified below, CommSec and AUSIEX did not provide notifications to ASIC in relation to reconciliations as part of the Client Money Issue within the time period required, but have reported all of the issues and its approach to addressing them.

77 It is unnecessary, for present purposes, to repeat the detail of each of the contraventions, as set out in the SOAFAC. Suffice to say I have taken that detail into account.

Submissions

ASIC's submissions

78 ASIC made submissions, *inter alia*, as to the nature and seriousness of each of the contraventions by issue, and the legal framework in which the contraventions occurred. In relation to each issue, ASIC made submissions as to the factual and legal bases of the

contraventions and the relief sought. As previously explained, the defendants largely agree with the way ASIC has characterised the contraventions. In addition, ASIC made submissions which addressed the steps taken by CommSec and AUSIEX implementing improvements as a consequence of the contravention, and recognised factors said to be in mitigation of the conduct for the purposes of imposing penalty.

79 ASIC addressed the compliance plans to which orders are sought, pursuant to s 1101B of the Corporations Act. These plans have been developed in consultation between ASIC and each of CommSec and AUSIEX, with a view to ensuring that the systems and controls relevant to the Reported Conduct for each of CommSec and AUSIEX are reviewed to ensure compliance with relevant obligations and any ongoing deficiencies addressed. ASIC acknowledged the significant work already undertaken by each of CommSec and AUSIEX in relation to systems and processes related to the Reported Conduct, including (among other matters) pursuant to Project Rampart (in relation to Client Money Issues) and Project Umbrella (in relation to Trade Confirmations Issues). However, ASIC also noted that each of CommSec and AUSIEX have continued to file notifications with ASIC in relation to ongoing issues of a related kind to the Reported Conduct, as detailed in the McKenzie Affidavit). While ASIC noted the ongoing work being undertaken by CommSec and AUSIEX, it submitted that a compliance program in the terms agreed is necessary to address the underlying causes of the Reported Conduct and related notifications that continue to be reported by CommSec and AUSIEX. Each of CommSec and AUSIEX have consented to the proposed compliance plans and ASIC submitted that the proposed orders and compliance plans satisfy the criteria identified in *ASIC v Westpac Banking Corporation (No 3)*.

80 ASIC identified the relevant maximum penalties for each of the contraventions, and made submissions as to what it said is the appropriate penalty for each contravention, and the basis thereof.

81 The contraventions and suggested penalties for each were conveniently summarised in a table annexed to ASIC's submissions, which is annexed to these reasons as Annexure B.

82 In summary, ASIC submitted that a substantial penalty is warranted, taking into account the extensive and systemic nature of the Reported Conduct which has affected multiple aspects of the businesses of both CommSec and AUSIEX, and the extended time period over which the contraventions took place.

83 The total of the pecuniary penalties that ASIC submitted are appropriate is as follows:

- (1) \$28.6 million in respect of CommSec; and
- (2) \$10.17 million in respect of AUSIEX.

84 ASIC acknowledged the Mitigating Factors, being that is that there is no evidence to indicate any of the contraventions were deliberate or the conduct of senior management, the defendants have cooperated, expressed contrition for the Reported Conduct, taken steps to remediate client detriment where suffered and to address the issues the subject of the Reported Conduct, and have agreed to ongoing compliance programs. ASIC submitted that having regard to the evidence of CommSec and AUSIEX admitted at the hearing, and the Mitigating Factors, that a 30 per cent discount to the headline penalty amounts is appropriate in this proceeding.

85 In submitting that was the appropriate discount, ASIC noted that in *ASIC v National Australia Bank Limited* [2020] FCA 1494 at [161], Lee J applied a 30 per cent discount to the headline penalty figure to reflect the respondent's cooperation, its early admissions and the adoption of a remediation scheme and the other mitigating factors.

86 Application of such a discount would result in pecuniary penalties of:

- (1) \$20.02 million in respect of CommSec (to be rounded down to \$20 million); and
- (2) \$7.12 million in respect of AUSIEX.

87 ASIC submitted, these amounts appropriately reflect the totality of the wrongdoing and are proportionate to the circumstances of the case. ASIC contends penalties in the range of those submitted by ASIC are necessary to satisfy the purpose of acting as a personal and general deterrent, and to ensure that the penalty amount is not such as to be regarded by the parties or others as an acceptable cost of doing business.

88 As previously explained, ASIC also sought that various declarations be made as to the contravening conduct. The form of the declarations is set out at [1]-[5] of the Amended Originating Process.

CommSec's and AUSIEX's submissions

89 In summary, CommSec and AUSIEX submit that there a number of features common to the Reported Conduct that ought to be considered in mitigation of the contraventions. In addition, CommSec and AUSIEX have expressed genuine contrition, both in statements by senior

officers and through their conduct, including the early admission of contraventions and cooperation with ASIC. Relatedly, CommSec and AUSIEX have consented to the ordering of a significant and detailed compliance plan designed to reduce the risk of further contraventions. This is in addition to the taking of a number of steps to improve compliance processes already in train before this proceeding was commenced.

90 It was submitted that these matters, taken together, support a conclusion that the penalties to be ordered by the Court may be lower than would otherwise have been the case. The 30% discount proffered to the Court by ASIC on account of these factors in mitigation is supported further by matters with significant overlap to the Mitigating Factors identified by ASIC that I will set out in further detail below. In this light, CommSec and AUSIEX submitted that a 30% discount is an appropriate recognition by this Court of the role that early acceptance of wrongdoing, contrition, and co-operation with regulators play in serving the administration of justice and furthering future compliance with the law by both them and other corporations.

Conduct that CommSec and AUSIEX rely on to support a discount

91 CommSec and AUSIEX accept that the Reported Conduct was serious and unacceptable. In that context it was submitted that the conduct at issue in these proceedings did not involve deliberate contraventions of the relevant obligations, but were, as described by ASIC, of a “technical nature” and generally arose from inadvertent errors.

92 In addition, each of CommSec and AUSIEX had in place significant compliance systems and risk management frameworks, policies and processes directed to ensuring compliance with their obligations. They show that CommSec and AUSIEX took compliance with regulatory obligations seriously, while accepting that more needed to be done. However, despite CommSec and AUSIEX’s compliance systems and risk management frameworks and policies, and their approach to compliance generally, there were a number of specific failures of IT systems, human errors and data entry errors that led to the Reported Conduct.

93 It was submitted that the Reported Conduct occurred despite genuine and significant efforts on the part of CommSec and AUSIEX to ensure compliance with their regulatory obligations. This characterisation of both the cause of the contraventions as errors, and the attitude of CommSec and AUSIEX to compliance, is reflected by the comparatively small scale of affected customers and harm when judged against the scale of the businesses. As such, CommSec and AUSIEX accept that the fact the Reported Conduct was able to take place as it did suggests that there were inadequacies in their compliance systems and processes. In addition to rectifying systems

to prevent reoccurrence of the Reported Conduct, CommSec and AUSIEX have made significant investment in risk and compliance generally, including by increasing the number of risk and compliance roles and undertaking several significant programs of work directed to upgrading existing compliance systems and controls to reduce the risk of similar conduct reoccurring. Importantly, CommSec and AUSIEX began making these improvements before the commencement of this proceeding.

94 It was submitted that in considering the seriousness of the contraventions arising from the Reported Conduct, the Court should have in mind that, with limited exceptions, the contraventions did not cause harm to customers. No customers were affected by the Client Money Issues, the AOP Issue or the Regulatory Data Issue. The Trade Confirmations Issue did affect customers, in the sense that there was a failure to send trade confirmations that contained all required information, that were accurate, or at all, but there is no suggestion that customers suffered any financial or other significant detriment by reason of those failures, including because in many instances the missing information was available from other sources. No instances of customers suffering detriments by reason of the Best Execution Issue or the Warrant Agreement Issue have been identified, although it is accepted that those issues gave rise to that possibility. For that reason, potentially affected customers have been compensated based on assumptions favourable to the customers. The Brokerage Issues involved customers being charged more than they ought to have been. It involved errors that overcharged affected customers in the order of \$10 to \$50 per trade for brokerage costs. Affected customers have been compensated for that overcharging.

95 It was submitted that it is appropriate for the Court to recognise the relatively small scale of financial harm done to customers through this inadvertent error, when compared to the many cases that involve deliberate overcharging, or errors that cause far greater financial detriment or remain un-remedied, while recognising the unacceptable conduct of taking fees without a lawful entitlement to do so.

96 In addition to potential customer harm, the Market Integrity Rules seek to prevent undermining of the integrity of the relevant markets. Most of the Reported Conduct had no effect on the relevant markets. While, as Mr Vacy-Lyle (Group Executive for Business Banking, CBA Group, who is responsible for the CommSec Business) accepts in his affidavit sworn 20 August 2021, some of the issues arising from the Reported Conduct, particularly the AOP Issue, Best

Execution and Regulatory Data Issues, had the potential to affect the relevant markets there is no suggestion that there was any such effect.

97 Other than in the case of the Brokerage Issues, CommSec and AUSIEX did not derive any revenue or direct benefit from the Reported Conduct. While the Brokerage Issues led to increased revenue to CommSec, that increased revenue has been returned to affected customers with interest, and was not material to the operations of CommSec or AUSIEX. It was submitted that the Court can safely proceed on the basis that CommSec and AUSIEX did not retain any additional revenue derived from the Brokerage Issues, or obtain any other direct benefit from the Reported Conduct.

98 Instances of contravention of obligations concerning client monies inevitably give rise to concerns that client moneys were misappropriated or lost. CommSec and AUSIEX submit that is not this case in this proceeding. Rather, the funds the subject of the Client Money Issues always remained in CommSec or AUSIEX accounts, albeit in the limited cases of trust account deficiencies, the funds were kept in general accounts mixed with non-trust funds. No clients suffered any detriment by reason of those issues. Further, in many instances, the Client Money Issues actually related to surpluses in relevant trust accounts. In the case of AUSIEX, all of the Client Money Issues involved a surplus in relevant trust accounts.

99 Finally, while it is apparent that there were many individual instances of the Reported Conduct, that occurred in the context of the large volume of business conducted by CommSec and AUSIEX. Further, many of the individual instances of contravention stemmed from single errors. For the most part, the Reported Conduct affected relatively low proportions of relevant customers and transactions. Where the harm caused by the issues is capable of a dollar quantification, the vast bulk involved relatively low amounts.

100 It was submitted that both CommSec and AUSIEX have demonstrated sincere contrition for the conduct the subject of these proceedings, a matter ASIC accepts. CommSec and AUSIEX's contrition has been demonstrated in a number of ways, including explicit statements by senior officers of each company, as well as through the actions taken in response to the identification of the issues and the conduct of CommSec and AUSIEX in its dealings with ASIC and their conduct of this proceeding. CommSec and AUSIEX highlighted the relevant evidence in that regard. It was submitted that contrition is also demonstrated by their early admissions of contravention and cooperation with ASIC.

101 CommSec and AUSIEX submitted that their willingness and commitment to address any remaining inadequacies is demonstrated by their agreement to enter into a court-ordered compliance program. It was submitted that a key aspect of the compliance plan is the appointment of an independent expert, who will be approved by ASIC, to review the adequacy and effectiveness of CommSec's and AUSIEX's systems and controls generally. The compliance program was the subject of negotiation and is comprehensive.

102 The defendants observed that ASIC accepts that the detailed compliance plans to which CommSec and AUSIEX have agreed are designed to ensure that any outstanding issues are addressed. This should give the Court comfort that the limited number of instances in which CommSec and AUSIEX have reported further instances similar to the Reported Conduct are unlikely to reflect ongoing issues, and that the penalties to be awarded in this case do not need to be fashioned so as to provide specific deterrence for the repetition of the Reported Conduct; CommSec and AUSIEX, in undertaking the compliance program, are doing what they can to prevent that occurring, in a manner approved by ASIC.

103 A key aspect of the compliance plan is the independent expert's review of the adequacy and effectiveness of CommSec's and AUSIEX's systems and controls generally. Systems and controls include matters such as technology and technological governance, oversight function, control mechanisms, processes and policies, human resources, skills and competencies, and operational risk management.

104 CommSec and AUSIEX also addressed other factors relevant to penalty, including the following.

105 As to the involvement of senior management, CommSec and AUSIEX submitted that there was no suggestion that the Report Conduct arose from the conduct of senior management of CommSec or AUSIEX or that they permitted the conduct to take place or continue. Rather, the compliance systems in place at the time and the improvements made to those systems during the period of the Reported Conduct suggest that CommSec's and AUSIEX's senior management were and remain committed to ensuring compliance with regulatory obligations. However, CommSec and AUSIEX accept that the fact that the Reported Conduct occurred is reflective of a failure of the systems put in place to meet that commitment. There have been relevant changes to the board or senior management of CommSec and AUSIEX since the contravening conduct occurred.

- 106 As to remediation, CommSec and AUSIEX submit and ASIC agrees that to the extent any of the conduct did, or had the potential to, cause a financial detriment to customers, they have been compensated with interest. It was submitted that this was done on bases favourable to the potentially affected customers and that CommSec took a proactive approach to remediating customers.
- 107 CommSec and AUSIEX provided considerable detail on the historical compliance systems and governance structures and submitted that the Court ought to find that CommSec and AUSIEX had in place governance structures, policies and procedures, controls and infrastructure designed to ensure compliance with their regulatory obligations. The extent of this internal structure supports a finding that CommSec and AUSIEX were genuinely committed to compliance with their regulatory obligations.
- 108 It was submitted that in addition to specific actions taken to rectify issues arising from the Reported Conduct, each of CommSec and AUSIEX have taken a number of steps to improve their risk management and compliance arrangements generally. Many of these steps commenced well before ASIC brought these proceedings. Again, detailed submissions and evidence were addressed to the steps taken.
- 109 It was submitted that CommSec and AUSIEX have cooperated with ASIC in respect of the Reported Conduct. Their cooperation included self-reporting almost all of the relevant conduct and explaining to ASIC the approach being taken to address the issues. The cooperation shown by CommSec and AUSIEX has dramatically reduced the expense and time required to be dedicated to these issues by both ASIC and the Court.
- 110 In respect of each of the contravention issues referred to in [4] above, CommSec and AUSIEX addressed, *inter alia*, the steps taken to escalate the issues within management once they had been identified and other mitigating factors including for some issues the compliance systems that had existed and any improvements to those systems and processes. It is unnecessary to repeat the detail of those submissions.
- 111 In addition, in relation to the Trade Confirmations Issues, CommSec addressed the prior instances on which it has been the subject of proceedings before the MDP for contraventions of r 3.4.1 of the Market Integrity Rules. It submitted there was only one such proceeding that relevantly concerned trade-confirmation issues, provided details and described what had been done to improve the systems as a result. CommSec also addressed ASIC's apparent reliance on

the conduct at issue in another proceeding before the MDP, namely proceeding MDP15/14, as relevant antecedent conduct, but submitted that conduct did not involve trade confirmations and bears little similarity to any of the Reported Conduct. CommSec also noted that compliance within an infringement notice is not an admission of guilt and does not mean that CommSec or AUSIEX is to be taken to have contravened s 798H of the Corporations Act: *Corporations Regulations 2001* (Cth), r 7.2A.10(2)(d), (e).

112 CommSec and AUSIEX ultimately submitted that:

- (1) the declaratory relief sought by ASIC ought to be granted;
- (2) the penalties agreed by the parties ought to be imposed; and
- (3) the compliance programs sought by ASIC ought to be ordered.

Consideration

113 Having considered the facts as agreed, the submissions of the parties, the evidence relied on by CommSec and AUSIEX, the contraventions and relevant principles, I am satisfied that it is appropriate to order the pecuniary penalties in the amount agreed, make the declarations sought and order the compliance program.

114 It is readily apparent from the submissions of ASIC and CommSec and AUSIEX, that they have given close and careful consideration to the relevant issues, with one of the parties being ASIC, a specialist regulator, to the appropriate declarations, orders and pecuniary penalties. In that context, in *DFWBII* the High Court at [60]-[61] noted the relevance of the fact that submissions were being advanced by a specialist regulator able to offer “informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance”, albeit that such submissions will be considered on the merits in the ordinary way.

115 The number, breadth and duration of the Reported Conduct is significant and indicates that CommSec and AUSIEX did not have adequate systems and processes in place to ensure compliance with their relevant obligations under their AFSLs and pursuant to the Market Integrity Rules and consequently, the Corporations Act (and additionally for CommSec, the ASIC Act). The conduct is properly characterised as being extensive and systematic, occurring over an extended period of time, which affected multiple aspects of the businesses of both CommSec and AUSIEX.

116 I accept ASIC’s submission that a substantial penalty is warranted.

117 It should be recalled that it is important to impose a penalty of sufficient size to act as a strong
deterrent to ensure CommSec and AUSIEX and others do not treat the risk of non-compliance
as a mere cost of doing business.

118 In the circumstances of this case, the agreed penalty is appropriate as reflecting the seriousness
of the contravention, yet recognising the mitigating factors present, including that there is no
evidence to indicate any of the contraventions were deliberate or the conduct of senior
management, CommSec and AUSIEX have cooperated with ASIC and in this proceeding,
expressed contrition for the Reported Conduct, taken steps to remediate client detriment where
suffered and to address the issues the subject of the Reported Conduct including agreeing to
ongoing compliance programs. I accept those mitigating factors. I also recognise CommSec's
and AUSIEX's acknowledgement that the contraventions are serious and unacceptable.

119 Where the Court is persuaded by the accuracy of the parties' agreement as to facts and
consequences, and that the agreed penalty proposed is an appropriate remedy in all the
circumstances, as in this case, it is highly desirable in practice for the Court to accept the
parties' proposal and therefore impose the proposed penalty: *Volkswagen* at [124]-[129].

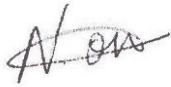
120 Nonetheless, this Court must impose a penalty that is appropriate. I am satisfied the agreed
penalty of \$20 million with respect to CommSec and \$7.12 million with respect to AUSIEX,
in the circumstances, satisfies the significant element of deterrence required in this proceeding.
It carries with it a sufficient sting to ensure that the penalty amount is not such as to be regarded
by the parties or others as an acceptable cost of doing business. Weighing all the relevant
factors, bearing in mind the protective and deterrent purpose of a pecuniary penalty, as applied
to the facts of this case, I am satisfied that agreed penalty is appropriate.

121 These proceedings are a matter of public interest, and the circumstances of the contraventions
call for marking of the Court's disapproval of the conduct. Consequently, the declarations
sought have significant utility. I am satisfied that it is in the interests of justice to make the
declarations sought. Given the circumstances of the contraventions, and the terms of the
compliance program, I am also satisfied that the orders sought with respect to the compliance
programs, should be made.

122 I will make the declarations and other orders in the form agreed by the parties.

I certify that the preceding one
hundred and twenty two (122)
numbered paragraphs are a true copy

of the Reasons for Judgment of the
Honourable Justice Abraham.



Associate:

Dated: 25 October 2022

Annexure A

[1 March 2021]



Statement of Agreed Facts and Contraventions

No. NSD

Federal Court of Australia
District Registry: New South Wales
Division: General

IN THE MATTER OF COMMSEC AND AUSIEX

Australian Securities and Investments Commission
Plaintiff

Commonwealth Securities Limited ACN 067 254 399 (**CommSec**) and
Australian Investment Exchange Limited ACN 076 515 930 (**AUSIEX**)
Defendants

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A. INTRODUCTION

1. For the purposes of this proceeding only, this Statement of Agreed Facts and Contraventions (**SOAFAC**) is made jointly by the Plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the Defendants, Commonwealth Securities Limited ACN 067 254 399 (CommSec) and Australian Investment Exchange Limited ACN 076 515 930 (**AUSIEX**), pursuant to s 191 of the *Evidence Act 1995 (Cth)* (**Evidence Act**).
2. The facts, matters and circumstances recorded in the SOAFAC may be used by the Court to draw inferences of fact.
3. This SOAFAC deals with the factual basis for a series of contraventions by CommSec and/or AUSIEX of:
 - (a) s 798H of the *Corporations Act 2001 (Cth)* (**Corporations Act**), by reason of contraventions of:
 - (i) the ASIC Market Integrity Rules (ASX Market) 2010 (ASX Rules), in force between 1 August 2010 and 6 May 2018;
 - (ii) the ASIC Market Integrity (Competition in Exchange Markets) Rules 2011 (Exchange Markets Rules), in force between 5 May 2011 and 6 May 2018; and
 - (iii) the ASIC Market Integrity Rules (Securities Markets) 2017 (Securities Markets Rules), in force between 7 May 2018 to the present;(collectively, the **Market Integrity Rules**);
 - (b) s 12DB of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**); and
 - (c) s 912A(1)(a) of the Corporations Act.
4. A table of the agreed upon contraventions is included at Annexure A for ease of reference.

B. THE PARTIES

5. ASIC is and at all material times was:
 - (a) a body corporate under s 8(1)(a) of the ASIC Act;
 - (b) entitled to commence and maintain these proceedings in its corporate name under s 8(1)(d) of the ASIC Act; and

- (c) entitled under s 1317J(1) of the Corporations Act to apply to the Court for a declaration of contravention and a pecuniary penalty.
6. CommSec is and at all material times was:
 - (a) the holder of an Australian Financial Securities Licence (AFSL) number 238814 (**CommSec Licence**), which authorises CommSec, among other activities, to deal in financial products in relation to wholesale and retail clients;
 - (b) a market participant of the ASX Limited (**ASX**) and Chi-X Limited (**Chi-X**) financial markets for the purposes of the Market Integrity Rules; and
 - (c) carrying on a financial services business in Australia within the meaning of s 911D of the Corporations Act.
 7. AUSIEX is and at all material times was:
 - (a) the holder of AFSL number 241400 (**AUSIEX Licence**) which authorises AUSIEX, among other activities, to deal in financial products in relation to wholesale and retail clients;
 - (b) a market participant of the ASX and Chi-X financial markets for the purposes of the Market Integrity Rules; and
 - (c) carrying on a financial services business in Australia within the meaning of s 911D of the Corporations Act.

C. STRUCTURE OF THE SOAFAC

8. The contraventions the subject of these proceedings relate to a range of conduct, some of which dates back a decade. Owing to limitation periods in each of the ASIC Act (s 12GBA(2)) and the Corporations Act (s 1317K), liability is limited to conduct occurring on or after 1 March 2015, and the number of agreed contraventions has been determined by reference to conduct occurring on or after that date.
9. Where conduct originated prior to that date, however, the conduct has been identified for the purposes of either putting in context later agreed contraventions or establishing a continuing course of conduct.
10. The offending conduct is organised by reference to the below (cumulatively, as applicable to each entity, the **Reported Conduct**):
 - (a) incorrect brokerage fees charged by CommSec, as detailed at paragraphs [23] to [68] below (**Brokerage Issue**);

- (b) breaches of client money and trust account requirements by CommSec, as detailed at paragraphs [86] to [165] below, and by AUSIEX, as detailed at paragraphs [172] to [200] below (**Client Money Issue**);
 - (c) inaccuracies in trade confirmations sent or failure to send trade confirmations as required, by CommSec, as detailed at [237] to [323] below, and by AUSIEX, as detailed at paragraphs [336] to [430] below (**Trade Confirmations Issue**);
 - (d) inadequate automated order processing (**AOP**) filters by CommSec to determine no change in beneficial ownership (**NCBO**), as detailed at paragraphs [445] to [454] below (**AOP Issue**);
 - (e) best execution obligations failures by CommSec, as detailed at paragraphs [457] to [481] below, and by AUSIEX at paragraphs [488] to [491] below (**Best Execution Issue**);
 - (f) trading of warrants on CommSec client accounts without having provided a copy of the current explanatory statement in respect of warrants published by the relevant market operator and without a valid Warrant Agreement Form (**WAF**) on record, as detailed at paragraphs [494] to [506] below (**Warrant Agreement Issue**); and
 - (g) failure to adhere to regulatory data requirements by CommSec, as detailed at paragraphs [511] to [521] below and by AUSIEX, as detailed at paragraphs [526] to [536] below (**Regulatory Data Issue**).
11. Each of CommSec and AUSIEX acknowledge that, given the extended time periods involved and the cross-section of financial services affected by the Reported Conduct, each entity failed to provide the financial services covered by their respective licences “*efficiently, honestly and fairly*” in contravention of s 912A(1)(a) of the Corporations Act for the period 1 March 2015 to 18 June 2020 for CommSec, and to February 2019 for AUSIEX. The SOAFAC addresses the s 912A(1)(a) contraventions by reference to the Reported Conduct, as well as by reference to common systemic failures revealed by root cause analysis undertaken by CommSec and AUSIEX.
12. Following the identification of the offending conduct and agreed contraventions, the SOAFAC addresses antecedent conduct found to involve breaches of the Market Integrity Rules by the ASIC Markets Disciplinary Panel (**MDP**), which is separate to the conduct the subject of the contraventions outlined in this SOAFAC. This information is included by way of background to explain why ASIC formed the view that a civil penalty

proceeding is the appropriate regulatory response, notwithstanding the availability of other measures such as the MDP.

D. OVERVIEW

13. Each of CommSec and AUSIEX provided financial services to clients, including services that allowed clients to trade securities and maintain a trading account online. Most of the trades were in equities (with CommSec issuing to clients 4,588,620 equities trade confirmations in 2015, and 6,483,457 in 2019 - noting that a trade confirmation may relate to multiple trades; AUSIEX issuing 1,653,906 in 2015 and 1,871,664 in 2019), but there were also trades in exchange traded options and other financial products.
14. By reason of s 798H of the Corporations Act, in providing many of these services, CommSec and AUSIEX as participants in the relevant markets were obliged to comply with market integrity rules made by ASIC under s 798G of the Corporations Act, including the Market Integrity Rules referred to in paragraph [3(a)] above.
15. The contraventions of the Corporations Act with which this SOAFAC is concerned arose in the context of CommSec and AUSIEX providing brokering and execution services to their clients, many of whom were retail clients. Clients generally placed orders online and the systems and records used to charge for the services provided and to manage related matters such as the handling of client monies and the discharge of related regulatory obligations were largely dependent on information technology systems, including (particularly in relation to client monies) third party provided systems.
16. The contravening conduct concerns a range of services and issues. There is not a single cause of all of the offending conduct. Nevertheless, there are common features across the conduct. The issues arose from errors such as information technology system coding or systems issues, human error, and/or data entry errors.
17. The only issue which resulted in any actual financial detriment to customers was the Brokerage Issue, although potential financial detriment to customers may have arisen from the Best Execution Issue and Warrant Agreement Issue. To the extent any clients of CommSec or AUSIEX actually or potentially suffered a financial detriment by reason of the contravening conduct in relation to the Brokerage Issue, the Best Execution Issue and the Warrant Agreement Issue, CommSec and AUSIEX have provided compensation, including interest. With respect to the balance of the issues, CommSec and AUSIEX accept non-compliance may also give rise to potential client detriment (albeit not financial detriment) or market integrity implications. Other than in relation to

the Brokerage Issue, ASIC does not allege, and there is no evidence to indicate that, any of the issues resulted in any revenue or direct benefit being derived by CommSec or AUSIEX. However, CommSec acknowledge it is possible they may have obtained benefits as a result of the AOP Issue and Best Execution Issue, in the form of trades placed that may otherwise not have been placed.

18. CommSec and AUSIEX have taken action directed toward remedying the causes of each of the issues giving rise to the contravening conduct. This has included changes to information technology systems, introduction of greater human oversight and controls, and changes to policies and procedures. CommSec and AUSIEX have entered into agreements with third-party providers which require them to conduct further assurance that their services comply with the specifications required by CommSec and AUSIEX.
19. More specifically, following identification of the Client Money Issues, CommSec and AUSIEX established Project Rampart. Following identification of the Trade Confirmation Issues, CommSec and AUSIEX established Project Umbrella. These projects are explained further below. Since the establishment of those projects, ASIC has received some further breach reports in respect of both Client Money Issues and Trade Confirmations Issues, including as a result of the work undertaken as part of those projects.
20. CommSec and AUSIEX accept that there were inadequacies in their processes and procedures to ensure compliance with the relevant obligations. While they did have in place processes addressing operational risk and compliance these processes were not sufficient to ensure compliance with the relevant regulatory obligations.
21. ASIC does not allege, and there is no evidence to indicate that, any of the contraventions were deliberate, or that the conduct constituting the contraventions was conduct of senior management.
22. CommSec and AUSIEX have cooperated with ASIC in relation to these issues and voluntarily taken steps to address the issues and to remediate any client detriment. In some instances, identified below, CommSec and AUSIEX did not provide notifications to ASIC in relation to reconciliations as part of the Client Money Issue within the time period required, but have reported all of the issues and its approach to addressing them.

E. BROKERAGE ISSUES

I. Background

23. ASIC received four breach reports pursuant to s 912D of the Corporations Act from CommSec, in relation to the overcharging of brokerage fees by CommSec (collectively, the **Brokerage Issues**). CommSec charged different brokerage rates depending on the method used by the client to place orders (eg online or by phone) and brokerage rates would differ depending on the terms applicable to the client accounts (including any discounts or preferred rates applicable).
24. Between 1 August 2010 and February 2020, CommSec was required to have appropriate supervisory policies and procedures to ensure compliance with the Corporations Act (rule 2.1.3 of the ASX Rules until 6 May 2018, and rule 2.1.3 of the Securities Markets Rules from 7 May 2018). The Brokerage Issues occurring during this period were caused by four issues which arose from errors in configuring pricing codes or account settings in the relevant information technology systems used to apply the brokerage rates. CommSec has refunded all identified affected customers and rectified its systems and account settings and since August 2018 has introduced control reports monitored daily or weekly to detect trades or accounts which may potentially be affected by these four issues.
25. In the period between 2015 and February 2020, the number of client accounts affected by the Brokerage Issues was 0.185% of the total number of domestic equity client accounts of CommSec in 2015, and thereafter reduced to a smaller proportion as set out below.
 - (a) Breach Report 1 (N-override brokerage issue)

26. Between 1 August 2010 and 31 August 2017, CommSec overcharged clients on 42,332 occasions, amounting to an aggregate overcharging of \$1,790,204.29 to customers in excess of what they should have been charged according to the terms and conditions applicable to their accounts.
27. CommSec has a number of codes that can be applied to override the current brokerage settings on an account. The overcharging arose as a result of the incorrect application of a code known as the 'N-override code' (or 'Normal-override code'), which was automatically applied when it should not have been.
28. The affected customers were charged telephone brokerage rates (starting from \$59.95) where orders had in fact been placed over the internet or trades were settled to

CommSec deposit accounts (where the applicable fees started from \$19.95 or \$29.95 respectively). The lower brokerage rates should have been applied.

29. The overcharge arose during a migration of customer accounts from iBroker to CommSec's Customer Support Console (**CSC**) in 2010 as part of a project named Project Jaguar. (iBroker is a trading solutions platform provided by a third party vendor and is referred to in the SOAFAC as the **Trading System**). In the Trading System, a flag was used to identify accounts for which a particular level of brokerage would be 'enforced' or charged. This flag was used to ensure that discount brokerage rate campaigns were applied. The flag was automatically removed from the Trading System once the marketing campaign to which it applied was over.
30. There were a number of marketing campaigns in operation during the period when Project Jaguar took a snapshot of the Trading System settings in order to create a migration rule to transition customer accounts to CSC. In December 2010, one particular campaign ended and the Trading System removed the relevant flags from the affected accounts in order to revert back to the correct brokerage charge. By this point, Project Jaguar had already taken the snapshot of the Trading System and applied a migration rule to ensure these accounts were still 'Enforced' (now 'Override') once converted to CSC. Since the campaign had already ended, no subsequent message came to CSC to remove the flag. The CSC system incorrectly interpreted this flag as requiring that the brokerage rate for these accounts should be set to the account's original default rate, which in most cases was the telephone brokerage rate. As a result, when these customers placed trades online, they were mistakenly charged brokerage at the higher telephone rate.
31. Instances of the overcharging originally became known to CommSec in 2011. Staff in the CommSec call centre had a process to address client inquiries in relation to incorrect brokerage which included checking whether the brokerage code had been incorrectly set to 'N'. Some specific instances of overcharging were dealt with on a case by case basis pursuant to a standard operating procedure for N-override pricing errors. However, the issue was not identified as a systemic issue and the matter was not escalated internally.
32. In March 2016, a retail brokerage pricing and delegations review was instituted. The aim of this review was to analyse and understand the brokerage pricing structure then in place (rather than any concern that there may be a systemic overcharge issue). The review identified excess complexity in the brokerage pricing structure, including complexity in trading groups (i.e. segmentation of customers within the CSC system

with reference to common characteristics such as pricing) and the related brokerage codes in CSC. During the review it became apparent that some customers were being charged on the basis of non-standard coding including, in some cases, the N-override code. Further investigation took place of a large number of these codes including the N-override code.

33. On 4 October 2016, CommSec confirmed that there was a brokerage overcharging issue but the extent of that issue was not known at that time. Between October and December 2016, more detailed analysis was performed to review actual brokerage charged against the amount that should have been charged in relation to transactions extending back to 2012.
34. On 31 January 2017, CommSec reported the N-override brokerage issue to ASIC, providing additional updates on 21 March 2017 and 28 November 2017.
35. On 2 March 2017, an IT fix was implemented to remove the N-override code from the customer accounts that had been identified as being impacted.
36. Between April 2017 and November 2017, CommSec undertook customer remediation. CommSec made payments to affected customers totalling approximately \$2.026 million (including interest compensation).
37. The overcharging within the limitation period commencing 1 March 2015, occurred on 10,509 occasions, amounting to an aggregate overcharging of \$492,230.13. The total amount paid to affected customers (including interest compensation) in respect of this same period was \$513,126.13.
38. CommSec undertook additional steps to further address the N-override brokerage issue, including introducing the control reports referred to in paragraph [69] below in 2018 and 2019.

(b) Breach Report 2 (Advertised online brokerage issue)

39. Between 1 August 2010 and 19 October 2018, CommSec overcharged approximately 9,918 customer accounts a variety of brokerage rates above the advertised pricing. CommSec charged customer accounts above the online advertised brokerage rate on approximately 74,872 occasions, amounting to an aggregate overcharging of \$2,433,429.72.
40. Some customers were charged the standard internet rate of \$29.95 rather than the internet preferred rate of \$19.95, despite qualifying for the preferred rate, and some were charged a greater amount despite qualifying for the internet standard rate or internet preferred rate.

41. Following completion of the remediation for the N-override brokerage issue, on 1 August 2017, a broader Brokerage Simplification Program was initiated by the Product Risk Management (PRM) team of CommSec. CommSec undertook further investigation into brokerage pricing being applied for online trading, including looking into the usage and controls over brokerage codes in relation to advertised brokerage rates and online trading. This review included an IT-based analysis of approximately 40 million contract notes, for which a process had to be set up. Approximately 80,000 contract notes identified by this IT process needed manual review.
42. Detailed data investigation occurred between September 2017 and June 2018. On about 10 November 2017, the first instances of divergence between advertised rates and online brokerage charged were identified, although further investigation was required to ascertain if this divergence was justified (for example, by reason of a bespoke arrangement with a client). In March 2018, instances of actual overcharging were confirmed and investigation into the extent of the overcharging continued. CommSec quantified the extent of the issue for the period since 2011 by 11 June 2018, and thereafter undertook further work to validate its findings as well as to investigate the cause of the issue.
43. CommSec identified that the vast majority of the brokerage overcharges were a result of accounts that:
 - (a) were linked to retail advisory groups; or
 - (b) were charged brokerage at the Internet Standard Rate or higher, rather than the Internet Preferred Rate for which they qualified.
44. There were particular clients who had been off-boarded as advisory clients and were on-boarded as non-advisory clients who did not have the correct brokerage code applied. Reliance on manual processes to move customers to the right code when there were changes to the customer's linked settlement account or maintenance tasks contributed to the issue.
45. On 1 August 2018, CommSec reported the "advertised online brokerage issue" to ASIC (after notifying ASIC of the issue verbally on 20 July 2018), providing written updates on 6 December 2018 and 14 March 2019.
46. On 20 October 2018, a system-fix to cap the issue was delivered, which involved reverting accounts to the correct trading groups and brokerage codes, and deactivating codes no longer in use.

47. During November 2018, CommSec remediated affected customers who had been charged over the advertised online brokerage rate from 2011 onwards, and in June 2020, further remediated customers who had been charged over the advertised online brokerage rate prior to 2011. In total, affected customers had been overcharged \$2,433,429.72, in relation to which CommSec made remediation payments totalling \$2,899,877.43 (including interest compensation).
48. The overcharging within the period commencing 1 March 2015, occurred on 22,065 occasions, amounting to an aggregate overcharging of \$808,630.93, in relation to which CommSec made remediation payments totalling \$880,761.43.

(c) Breach Report 3 (Advertised phone brokerage issue)

49. Between 1 August 2010 and 12 March 2019, CommSec overcharged 2,170 customer accounts an aggregate of \$51,585.45, on 3,434 occasions by charging brokerage for phone transactions at a higher rate than stated in the Financial Services Guide (FSG) and on the CommSec website.
50. Following the advertised online brokerage issue remediation, CommSec continued with its brokerage review in January 2019 which led to the identification of the potential issue of overcharging relating to phone brokerage. CommSec identified that the phone brokerage overcharges were caused by a misalignment of data in the CSC and the Trading System systems (in some instances there was a mismatch between trading groups to which a customer is allocated in CSC and the account subtype or charge field in the Trading System which in some instances was at a higher rate), and incorrect system configuration in the Trading System.
51. On 14 March 2019, CommSec reported the issue to ASIC, providing further written updates on 29 March 2019 and 28 June 2019.
52. On 24 May 2019, a fix to cap the phone brokerage issue was delivered by aligning system settings and removing incorrect phone brokerage overrides in the Trading System.
53. In June 2019, CommSec remediated affected customers charged over the advertised phone brokerage rate from 2011 onwards, and in June 2020, further remediated customers who had been charged over the advertised phone brokerage rate prior to 2011. In total, CommSec has paid \$64,469.67 (including interest compensation) of refunds to 2,170 affected customer accounts as part of its remediation program.

54. The overcharging within the limitation period commencing 1 March 2015, occurred on 379 occasions, amounting to an aggregate overcharging of \$13,872.11, in respect of which CommSec paid \$15,225.51 (including interested compensation).

(d) Breach Report 4 (ESUPERFUND Issue)

55. In March 2015 CommSec introduced a new pricing arrangement for ESUPERFUND clients who settled their trades online through an Accelerator Cash Account (**ACA**). During this process, eligible accounts should have been moved to a new ESUPERFUND trading group and brokerage code. However, a group of ESUPERFUND accounts were excluded from the migration as these accounts were flagged as suspended or restricted to 'sell only'.

56. Only customer accounts that had been migrated to the new trading group and brokerage code received preferred (ie lower) brokerage rates. This excluded the non-migrated ESUPERFUND accounts. When customers of the non-migrated ESUPERFUND accounts resumed normal trading (ie once the suspension or 'sell only' limitation was lifted from their accounts), they continued to be charged brokerage in accordance with the old pricing arrangement. The failure to migrate those accounts to the new trading group and brokerage code was an error at an operational level.

57. Although CommSec had migrated customers to the new ESUPERFUND brokerage code in March 2015 (save for the non-migrated ESUPERFUND accounts noted in the preceding paragraph), the new pricing arrangement was not reflected in any FSG prior to February 2017.

58. On 18 February 2017, CommSec updated the addendum to its FSG in respect of ESUPERFUND customers (which forms part of the CommSec FSG) (**February FSG addendum**) to reflect the new pricing arrangement. Accordingly, from 18 February 2017, the amount being charged to the non-migrated ESUPERFUND customers was greater than the advertised rate in the February FSG addendum.

59. On 17 June 2017, CommSec updated the addendum to its FSG in respect of ESUPERFUND customers (**June FSG addendum**), again with new pricing rates for customers who settled their trades online through an ACA. . The new rates were not applied to the non-migrated ESUPERFUND customers.

60. In November 2018, following an enquiry from an ESUPERFUND customer, it was identified that there was brokerage overcharging. The incident however was considered a one-off.

61. An investigation between April to June 2019 identified that there had been a migration undertaken in March 2015 to move eligible ESUPERFUND accounts to the new brokerage pricing settings and that customers with suspended or sell-only status were excluded from the population that was migrated. When the non-migrated ESUPERFUND accounts resumed normal trading, the new pricing was not applied to them, and there is nothing to suggest this was appreciated at the time. Data analysis on specific trades commenced on around 28 August 2019 and continued throughout September 2019. This identified that there were accounts other than the account identified in 2018 that were affected.
62. On 2 December 2019, CommSec reported the issue to ASIC. Between November 2019 and February 2020, CommSec implemented changes to the brokerage code and/or trading group of affected accounts.
63. Between 18 February 2017 and 27 February 2020, CommSec charged brokerage fees in excess of the rates advertised in the FSG to 295 customer accounts which held equity accounts through ESUPERFUND. The total amount of overcharge was \$76,974.80, in relation to which CommSec made remediation payments totalling \$80,370.94 (inclusive of interest). Of this total amount of overcharge, \$17,653.44 was overcharged in the period on or after 13 March 2019.
64. The customers overcharged between February 2017 and 27 February 2020 (referred to in the preceding paragraph) are a subset of the customers to whom CommSec made remediation payments. For the purposes of customer remediation, CommSec took the approach of extending the remediation to non-migrated ESUPERFUND customers who were charged the non-preferred brokerage rates dating back to 2 March 2015, on the basis that the creation of the new brokerage code in March 2015 signalled an intention that all eligible ESUPERFUND accounts ought to have been charged preferred brokerage rates from that time, even though the preferred brokerage rate was not advertised in the FSG until February 2017. Based on this approach to remediation, CommSec identified that there were in total 816 retail clients who held equity accounts through ESUPERFUND and were charged the non-preferred brokerage rate between 2 March 2015 and 27 February 2020. The total amount charged above the preferred rate was \$119,247.12 in the period between 2 March 2015 and 27 February 2020 (including the overcharge between February 2017 and 27 February 2020 referred to in the preceding paragraph).
65. On 30 March 2020, CommSec processed payments to all 816 customers (who between them held 421 accounts) for a total of \$126,727 (inclusive of interest).

(e) Failures in supervisory policies and procedures

66. Until the introduction of the control reports between August 2018 and May 2019 referred to at paragraph [69] below, introduced to detect potential brokerage overcharges or instances where incorrect settings for a particular account may lead to overcharges, CommSec admits that it did not have adequate supervisory policies and procedures in place to ensure compliance with s 912A(1)(a) of the Corporations Act because:
- (a) CommSec did not have in place procedures for the automated generation of control reports designed to detect potential instances of brokerage overcharges or incorrect settings, for those reports to be regularly monitored on a daily or weekly basis, and for issues to be investigated and addressed. In particular, it did not have in place control reports of the nature introduced between August 2018 and May 2019, referred in paragraph [69];
 - (b) the absence of those control reports introduced between August 2018 and May 2019 meant that CommSec did not have adequate procedures to detect instances where customers had been charged in excess of the advertised brokerage rates to which they were entitled; and
 - (c) those controls (or controls of a similar kind) were necessary to ensure that CommSec was providing brokerage services to customers honestly, efficiently and fairly.

(f) Proportion of accounts affected

67. Between 2015 and 2019, the number of domestic equity client accounts overcharged brokerage in each calendar year as a result of the N-override brokerage issue, advertised online brokerage issue and advertised phone brokerage issue, as a proportion of the total number of CommSec domestic equity client accounts that were open at any point within each calendar year was approximately:

2015	2016	2017	2018	2019
0.185%	0.143%	0.066%	0.039%	0.000%

68. Between 2017 and 2019, the number of ESUPERFUND domestic equity client accounts charged brokerage at the non-preferred brokerage rate in each calendar year (including those charged at that rate before the FSG was amended in February 2017), as a proportion of the total number of domestic equity client accounts that were open at any point within each calendar year was approximately:

2017	2018	2019
0.008%	0.007%	0.005%

(g) Additional controls and brokerage simplification

69. CommSec implemented the following control reports between August 2018 and May 2019 to detect potential brokerage overcharges or instances where incorrect settings for a particular account may lead to overcharges (eg overrides and trading group changes):

- (a) Brokerage Overcharge Control Report (CT-114827) – introduced in around August 2018. This is a daily report which identifies any instances where the brokerage charged may have differed from the expected brokerage charge in relation to internet placed trades. This control detects trades which could potentially be affected by the N-override brokerage issue, advertised online brokerage issue and ESUPERFUND issue.
- (b) Partially Executed Phone Trades (CT-114827) – introduced in around May 2019. This is a weekly report which identifies phone trades executed across multiple price tiers that may result in an overcharge. This control detects trades which could be potentially be affected by the advertised phone brokerage issue.
- (c) Web Overrides Change Report (CT-114831) – introduced in around January 2019. This is a weekly report which identifies where a manual brokerage override is applied to an account with default settings. This control detects accounts which could be potentially affected by the N-override brokerage issue, advertised online brokerage issue and ESUPERFUND issue.
- (d) Trading Group Change Report (CT-114831) – introduced in around January 2019. This is a weekly report which identifies manual trading group changes that may place an account into a higher charge group. This control detects accounts which could be potentially be affected by the advertised online brokerage issue and ESUPERFUND issue.
- (e) Qualified vs Current Setting Report (CT-114831) – introduced in around January 2019. This is a weekly report which identifies discrepancies between brokerage qualification (ie whether the account is eligible for internet preferred or internet standard pricing based on the criteria in the FSG) and current settings for all tiers of charge scales. An account will be shown in the report if the customer is being overcharged in total across all tiers. This control detects accounts which could

potentially be affected by the N-override brokerage issue, advertised online brokerage issue and ESUPERFUND issue.

70. In addition, CommSec has simplified its brokerage pricing system by reducing the number of pricing codes by 45%. Between February 2019 and March 2019, CommSec deactivated 357 brokerage codes from 794 retail brokerage codes.

II. CommSec admitted contraventions of the Corporations Act

(a) Section 798H of the Corporations Act

71. At all material times after 1 March 2015, CommSec was a 'Market Participant' in the markets operated by the ASX and Chi-X and was required by s 798H of the Corporations Act, to comply with the applicable Market Integrity Rules, including:

- (a) from 1 March 2015 to 6 May 2018, the ASX Rules, including rule 2.1.3;
(b) from 7 May 2018 onwards, the Securities Markets Rules, including rule 2.1.3.

72. By reason of rule 2.1.3 of the ASX Rules and rule 2.1.3 of the Securities Markets Rules referred to above, CommSec was required to have appropriate supervisory policies and procedures to ensure compliance with, inter alia, the Corporations Act.

73. In the premises of paragraph [66], CommSec admits that it did not have appropriate supervisory procedures to ensure that it complied with the Corporations Act (in particular, s912A(1)(a)), until the enhancements to controls in late 2018 and early 2019 set out above in paragraph [69].

74. CommSec contravened s 798H of the Corporations Act by reason of its failure to comply with rule 2.1.3 of the ASX Rules and the Securities Markets Rules, as applicable.

F. CLIENT MONEY ISSUES

I. Background

75. During the period 2017-2019, CommSec and AUSIEX submitted a series of breach reports to ASIC regarding failures in client monies related matters, as further described at paragraphs [86] – [165] in respect of CommSec, and paragraphs [172] to [200] in respect of AUSIEX (**Client Money Issues**).

76. CommSec and AUSIEX were required by the ASX Rules and Securities Market Rules to undertake daily and weekly trust account reconciliations of their trust accounts, which were required to be accurate in all respects.

77. While the required reconciliations were undertaken, errors were made in the way in which funds were recorded in different systems and accounts and the affected reconciliations were not accurate in all respects. Where these errors caused client money not to be held in trust, client monies were held in the general account (**General Account**), and as a result remained within the control of CommSec and AUSIEX. ASIC does not allege, and there is no evidence to indicate that, CommSec or AUSIEX lost, or utilised any client monies, or misappropriated client funds in any way, or that any client has suffered financial loss as a result of the Client Money Issues.
78. The instances of client money not being included in the correct accounts had various causes. Many of the Client Money Issues were caused or contributed to by issues associated with the information technology systems used by CommSec and AUSIEX, although some were also caused by manual processing errors. Both entities used (and continue to use) the Trading System (ie the trading solutions platform provided by a third party vendor). The Trading System provides CommSec and AUSIEX's booking and settlement function and, in the context of client monies, is the source of reporting of trustable values for the purpose of conducting daily reconciliations.
79. CommSec's Operations Team perform a daily trust transfer calculation for its trading accounts to determine the amount of funds required to be in the CommSec and AUSIEX trust accounts. This calculation is undertaken using data from the Trading System to create a report known as the 'ACTSUM'.
80. The amount is derived from calculations encompassing all of CommSec's or AUSIEX's relevant transactions in the Trading System (with separate sums for each of CommSec and AUSIEX). The amount reported by the Trading System to be held in trust is based on the values recorded in a trust table. The determination of the trustable amount is based on rules (that is, the Trading System specifications) as to when trust obligations are created and closed based on the settlement status of individual client trade transactions. The process of updating the trust table in the Trading System is automatic based on transactions, and updates to the transactions conducted in the system.
81. Exception reports were used to identify issues in the ACTSUM calculation. For example, there is an 'Open Credit Not in Trust' report and a 'Closed Credit in Trust' report. All amounts in excess of the amount generated by the ACTSUM calculation are transferred from the trust account to the General Account as part of this daily process.
82. Following each such daily trust transfer, a trust reconciliation is performed by 7pm on the next business day. Before October 2020, the trust reconciliation was a two-way reconciliation, in that it reconciled (1) the trust account general ledger balance

according to the Trading System trust table and (2) the balance in the trust account bank statement, and reviewed for any unauthorised withdrawals from trust.

83. On 1 October 2020, CommSec and AUSIEX implemented a three-way reconciliation tool as the primary method for determining the amount of funds required to be held in the CommSec and AUSIEX trust accounts (see below at paragraph [216]).
84. The Client Money Issues include the failure to detect during the reconciliation process the holding of non-client money in trust accounts and/or there being a deficiency of client money in trust accounts. This resulted in the reconciliations not being “accurate in all respects”, in contravention of rule 3.5.9 of the ASX Rules and Securities Markets Rules. The underlying surplus or deficiency in the trust account was not apparent on the face of the reconciliation, but rather the inputs into the reconciliation were incorrect, causing the reconciliation not to be correct in all respects.
85. There were also occasions where CommSec and AUSIEX failed to notify ASIC of the contravention within the two business-day timeframe set down by rule 3.5.10(b) of the ASX Rules and Securities Markets Rules, or failed to notify ASIC of a deficiency of funds identified by a reconciliation within two business days, in contravention of rule 3.5.10(d) of the Securities Market Rules.

II. CommSec Client Money Issues

(a) \$1,952.39 Trust Deficiency

86. On 7 June 2018, CommSec identified a \$1,952.39 deficiency of funds in the CommSec Trust Account.
87. The \$1,952.39 Trust Deficiency was made up of 4 lines. A line refers to an individual amount that is required to be held in the CommSec trust account. The earliest line (being an amount of \$29.18) arose on 5 January 2018. The deficiency was the result of manual processing errors and in relation to the first line also a limitation in the configuration of the Trading System.
88. Accordingly, the daily reconciliations of the CommSec trust account performed for 5 January 2018 to 6 June 2018 (being 105 business days) were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)
89. On 12 June 2018, CommSec notified ASIC of the trust deficiency (at that stage identified as \$1,953.06). This was within the two-business day requirement for

notification stipulated in rule 3.5.10 (there being a weekend and a public holiday between 7 June and 12 June 2018).

(b) \$282.53 Trust Deficiency

90. On 12 June 2018, CommSec identified a \$282.53 deficiency of funds in the CommSec Trust Account.
91. This was the result of multiple deposits received from five clients not accurately distinguishing the component of the deposits that account for brokerage charged. In circumstances in which the clients had positive cash balances held in trust that were less than the amount of brokerage for the trade they performed, the trustable amount was not accurately calculated in the Trading System.
92. The \$282.53 Trust Deficiency was made up of 5 lines, all of which arose on 12 June 2018, and which were rectified on 13 June 2018.
93. Accordingly, the daily reconciliation of the CommSec trust account performed for 12 June 2018 was not accurate in all respects, in contravention of rule 3.5.9. (This reconciliation was also affected by other Client Money Issues.)
94. On 15 June 2018, CommSec notified ASIC of the \$282.53 Trust Deficiency. This was within the two-business day requirement for notification stipulated in rule 3.5.10.

(c) \$615.82 Trust Deficiency

95. On Friday, 8 June 2018, CommSec identified and rectified a \$615.82 deficiency of funds in the CommSec trust account. The deficiency was initially rectified via a manual adjustment, prior to the relevant value in the Trading System database being updated by a third party vendor on Tuesday, 12 June 2018.
96. The deficiency was the result of a Clearing House Electronic Subregister System (CHES) notification not reflecting correctly in the trust ledger in the Trading System. CHES is a computer system used by the ASX to record shareholdings and manage the settlement of share transactions. An overnight process to deliver stock resulted in a CHES rejection. A data fix by the third party vendor was incorrectly applied which meant that in the Trading System the trust ledger did not reflect the amount.
97. The \$615.82 Trust Deficiency occurred from 26 March 2018 and was rectified on 8 June 2018.
98. Accordingly, the daily reconciliations of the CommSec trust account performed for 26 March 2018 to 7 June 2018 (being 51 business days) were not accurate in all

respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)

99. On 19 June 2018, CommSec notified ASIC of the \$615.82 Trust Deficiency. This was outside of the two-business day requirement for notification in rule 3.5.10(b).

(d) \$4,859,286.05 Trust Surplus

100. On 29 May 2018, CommSec identified a \$4,859,286.05 surplus of funds in the CommSec trust account.

101. The earliest element of the matter was a line (being one of 149 lines which had accumulated over time in the trust account contributing to the \$4,859,286.05 Trust Surplus) booked on 2 July 2015. This concerned an amount of \$13.80. The majority of the surplus arose because of a system defect which occurred in specific circumstances in which trades on margin lending accounts that executed with a third party broker were rebooked. The system was configured so that the value of the original trades continued to be recognised as trustable.

102. A request to correct the surplus was raised with the third party vendor on 31 May 2018 and was completed the following day.

103. Accordingly, the daily reconciliations of the CommSec trust account performed for 2 July 2015 to 31 May 2018 (being 738 business days) were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)

104. On 10 July 2018, CommSec notified ASIC of the \$4,859,286.05 Trust Surplus. This was outside of the two-business day requirement for notification in rule 3.5.10(b).

(e) \$800.27 Trust Surplus

105. On 5 September 2018, CommSec identified a surplus amount of \$800.27 had held in the CommSec trust account since 31 August 2018.

106. The surplus arose when the third party vendor applied a fix to address an issue which had arisen in the Trading System following a change in CHES code name. The issue caused a trial balance not to reconcile, and the third party vendor was requested to address this on 31 August 2018. The fix applied created an incorrect trust entry in the Trading System, but this was not appreciated until the surplus in trust was identified on 5 September 2018.

107. The surplus was rectified on 6 September 2018.

108. Accordingly, the daily reconciliations of the CommSec trust account performed for 31 August 2018 to 5 September 2018 (being 4 business days) were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)
109. On 9 October 2018, CommSec notified ASIC of the surplus amount being held in the CommSec trust account. This was outside of the two-business day requirement for notification in rule 3.5.10(b).
- (f) Failure to notify ASIC of \$37,094 deficiency in trust account
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110. When making certain payments to clients who had traded in CommSec's over the counter (OTC) contract for the difference (CFD) product, CommSec received the funds into trust from a third party. To facilitate payments to the clients from the trust account, CommSec initially transferred the money into the CommSec General Account. The CommSec Market Operations team then initiated a process for the relevant monies to be paid from the General Account to the clients' respective bank accounts on the same day.
111. On 4 October 2018, CommSec received instructions from 6 clients to withdraw funds totalling \$37,094 from the OTC CFD trust account.
112. Due to an oversight on 4 October, the payment process was not initiated by a CommSec staff member and the \$37,094 was not paid to the clients' bank accounts. As a result, the client money remained in the General Account overnight.
113. On 5 October 2018, the issue was detected during a reconciliation of the General Account and the matter was corrected the same day.
114. On 2 November 2018, CommSec reported the deficiency of funds to ASIC.
115. Although there was no issue with the daily reconciliation performed on 5 October 2018, CommSec failed to notify ASIC of the overnight deficiency of funds within two business days, in contravention of rule 3.5.10(d) of the Securities Market Rules.
116. An additional control was introduced by CommSec which requires a separate review of the general bank account to verify all required payments have been correctly completed. On 22 October 2018 an email was sent to the Operations team outlining the new process.
117. On 30 May 2019, CommSec announced its decision to discontinue offering CommSec-branded CFDs through partnership with IG Markets. Open positions were closed by 26 July 2019.

(g) \$6,360.92 Trust Surplus

118. Between 9 October 2018 and 8 February 2019, CommSec held a surplus of \$6,360.92 in the CommSec trust account.
119. The issue was identified on 8 February 2019 when the CommSec Project Team was testing a report for a new aged creditor process for balances greater than 30 days.
120. The surplus arose when processing application monies in respect of rights which a client bought and then sold on-market. Because of the configuration of the Trading System, the application money associated with the buy was not, in the particular circumstances, removed from trust.
121. The surplus was rectified on 8 February 2019 (which was the day it was identified).
122. Accordingly, the daily reconciliations of the CommSec trust account performed for 9 October 2018 to 7 February 2019 (being 84 business days) were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)
123. On 19 February 2019, CommSec notified ASIC that there was an incident concerning a surplus of \$6,360.92 held in the CommSec trust account. This was outside of the two-business day requirement for notification in rule 3.5.10(b).
124. An uplift of the exception control report (as part of Project Rampart (see below)) has been completed to identify transactions impacted by the system defect and on 6 April 2019, a system update was deployed to production.

(h) \$9,100.05 Trust Surplus

125. Between 23 January 2019 and 4 March 2019 CommSec held a surplus amount of \$9,100.05 in the CommSec trust account.
126. The matter was identified on 4 March 2019 whilst CommSec was reviewing the new 'Aged Creditors in Trust' report developed as part of the Project Rampart (and referred to below at paragraphs [206] to [211]). The Aged Creditors in Trust report identifies balances in trust that have reached 30 days. Once these balances are identified, action is taken to investigate whether these balances can be paid to the client.
127. On this occasion, the 'Aged Creditors in Trust' report showed an amount of \$9,100.50 due to be paid to a client and so held in trust. It was ascertained that the relevant amount had already been paid to the client. A systems limitation issue in the Trading System had meant that because multiple transactional steps were processed by the system for the same transaction at precisely the same time, a default sequential

ordering of transactional processes was applied, which in the particular circumstances meant an excess trustable amount was created, causing a surplus to be held in the trust account.

128. The surplus was identified and rectified on Monday, 4 March 2019.
129. Accordingly, the daily reconciliations of the CommSec trust account performed for 23 January 2019 to 1 March 2019 (being 27 business days) were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)
130. On 22 March 2019, CommSec notified ASIC of a surplus amount of \$9,100.05 held in the CommSec trust account. This was outside of the two-business day requirement for notification in rule 3.5.10(b).
131. An amendment to the scheduling of the impacted processes to ensure potential system processing conflicts are avoided has been actioned. An IT release to address this was deployed on 5 October 2019.

(i) Margin relating to house error position

132. CommSec held non-client monies in the CommSec trust account 87 times between 27 October 2011 and 7 June 2019.
133. Between 1 March 2015 and 7 June 2019, there were 63 instances on which this occurred, and during such period the daily reconciliations for 63 days (ie, one for each instance) were not accurate in all respects, in contravention of rule 3.5.9. Of those:
 - (a) 60 instances (totalling \$440,785.99) occurred on or before 12 March 2019; and
 - (b) 3 instances (totalling \$5,100) occurred on or after 13 March 2019.(This date range includes reconciliations affected by other Client Money Issues.)
134. The matter was discovered by CommSec on 1 July 2019 as part of the ongoing analysis into exchange traded options performed as part of Project Rampart.
135. This surplus arose because margin applied to options clients was erroneously also applied to positions in certain house accounts (to which it was not applicable as it was only applied to clients). The house accounts were used when correcting trading errors. The margin applied in error was treated as trustable, because it was by its nature only applicable to client accounts and so ordinarily trustable. Once the trading error had been addressed, the margin ceased to be held in the house error account, and the surplus in trust would at that point automatically correct.

136. CommSec implemented a change to the configuration of the house account on 7 June 2019 so that the additional margin was no longer applied to these house positions.

137. On 25 July 2019, CommSec notified ASIC of the issue. This was outside of the two-business day requirement for notification in rule 3.5.10(b).

(j) Failure to notify ASIC of \$3,898.08 deficiency in trust account

138. On 15 July 2019, CommSec failed to hold client money totalling \$3,898.08 in the CommSec trust account.

139. That issue arose as a result of a client cheque issued by CommSec for a deceased estate account being erroneously banked on Friday, 12 July 2019 by the drawee's solicitor into the General Account from which it was drawn. The next business day, 15 July 2019, in accordance with its usual process, CommSec marked the cheque as presented in its records, which had the result that the amount being held in trust pending presentation would cease to be held in trust. Separately that day, the CommSec staff undertaking reconciliations identified the credit but in error marked it as "allocatable" rather than "unreconciled", which meant it was not escalated for tracing that day (which would have led to identification of the error at the bank and the money being put into trust as it would have been identified as related to the client). Instead, this was identified and rectified on 16 July 2019.

140. On 21 August 2019, CommSec reported the deficiency of funds to ASIC.

141. Although there was no issue with the daily reconciliation performed on 16 July 2019, CommSec failed to notify ASIC of the deficiency of funds within two business days, in contravention of rule 3.5.10(d) of the Securities Market Rules.

(k) \$3,000 Trust Deficiency

142. Between 16 March 2020 and 24 March 2020, CommSec had a deficiency of \$3,000 in the CommSec trust account.

143. This arose in allocating BPAY payments made by clients to settle buy trades they have placed. Such BPAY amounts which are not allocated as a result of automated processes are held in a trust account. These unallocated amounts are then allocated to client accounts manually, and the entries in the trust account for the allocated BPAY amounts closed out. This involves a manual netting of entries to offset them to zero, which due to oversight by the staff responsible for this process did not occur. As a result, the relevant amount was not included as part of the client's trustable balance.

144. On 24 March 2020, CommSec identified and rectified the deficiency.

145. Accordingly, the daily reconciliations of the CommSec trust account performed between 16 March 2020 and 23 March 2020 (being 6 business days), were not accurate in all respects in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)
 146. On 26 March 2020, CommSec notified ASIC. This was within the two-business day requirement for notification stipulated in rule 3.5.10.
 147. On 26 March 2020, the CommSec Settlements Team checklists were updated to include a step to verify the entries in the relevant trust account has been offset to zero before the trust reporting is run.
 148. On 29 April 2020, configuration changes were made within the Trading System that would allocate BPAY payments directly to client trading accounts if there was a customer reference number. Previously this automated allocation required both a customer reference number and an open contract note value to match exactly to a client trading account.
 149. An 'Account Imbalance' report has been built and was deployed into production on 9 May 2020. This report will identify if an allocation is out of balance. The report will highlight an allocation which does not balance to zero. This account imbalance check will also be included as part of the new three-way reconciliation system pre checks.
- (l) \$7,792.10 Trust Deficiency
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150. Between 18 March 2020 and 24 March 2020, CommSec had a deficiency of \$7,792.10 in the CommSec trust account.
151. This issue was caused by the same circumstances as item (k) above.
152. Accordingly, the daily reconciliations of the CommSec trust account performed for 18 March 2020 and 23 March 2020 (being 4 business days), were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues, and in particular is a subset of the reconciliation.)
153. On 24 March 2020, CommSec identified and rectified the deficiency, together with the identification and rectification of the previous item.
154. On 26 March 2020, CommSec notified ASIC. This was within the two-business day requirement for notification stipulated in rule 3.5.10.

(m) Trust Surplus of funds credited to Share Direct

155. Between 18 June 2007 and 10 January 2020, CommSec held an undetermined amount of non-client monies in the Share Direct Account, a trust account (**Share Direct Nominees Account**).
156. Share Direct is an authorised representative and nominee entity of CommSec which provides a custodial or depository service in relation to securities for clients who take up financial products that CommSec offers, arranges or is otherwise involved in.
157. This Share Direct Nominees Account is used primarily to hold client entitlements, such as securities issued in an initial public offering (which are received from the share registry and bulk and must then be allocated to clients).
158. In around November 2019, as part of Project Rampart, it was decided CommSec would perform an internal review of CommSec's nominee accounts. This included the review of the Share Direct Nominees Account.
159. CommSec's review identified four small holdings which could not be allocated to any client and for which dividends had been received and held in trust. Following investigation, it was concluded that these holdings had been purchased by or transferred to CommSec or a related entity on their own account (in 2003, 2007, 2012 and 2016) and were therefore house positions. As a result, the dividends received should not have been held in trust.
160. The total amount of dividends paid into the trust account in relation to these holdings between 18 June 2007 and 26 September 2019 was \$15,620.88, of which \$6,821.46 was paid on or after 1 March 2015. As at the date of CommSec's review, \$8,985.96 remained in the trust account.
161. Following identification of this incident on 26 November 2019, CommSec removed the relevant money from this trust account. An amount of \$8,925 was transferred to the General Account on 5 December 2019 and the balance of \$60.96 was transferred on 10 January 2020.
162. A surplus existed on the account from before 1 March 2015 until 10 January 2020. Accordingly, the daily reconciliations of the CommSec trust account (which included balances of the Share Direct Nominees Account performed for 1 March 2015 to 9 January 2020 (being 1,231 business days), were not accurate in all respects, in contravention of rule 3.5.9. Of those:
 - (a) 1,021 reconciliations were in respect of days between 1 March 2015 and 12 March 2019; and

- (b) 210 reconciliations were in respect of days between 13 March 2019 and 9 January 2020.

(This date range includes reconciliations affected by other Client Money Issues.)

- 163. Each of the holdings were sold by CommSec on 16 January 2020.
- 164. On 14 April 2020, CommSec reported the issue to ASIC. This was outside of the two-business day requirement for notification in rule 3.5.10(b).
- 165. CommSec has taken the following steps to prevent recurrence of this incident:
 - (a) an enhanced daily reconciliation has been implemented for the Share Direct Nominees Account. This involves a four-eye check review of the account to ensure no units are allocated to it that should not be. Screenshots of the Trading System system are taken daily and a second user conducts a review. Any holdings or transactions listed are escalated for investigation;
 - (b) CommSec's process and procedures have been updated so that the Share Direct Nominees Account is only used to facilitate IPOs going forward. If CommSec are left with stock on hand for voluntary offers after a Corporate Action then CommSec is no longer to utilise the Share Direct Nominees Account. Instead, CommSec will transfer the stock from the CommSec nominee account to the market operations error account (a non-client account) (ie, instead of the Share Direct Nominees Account) and close out the position from that account;
 - (c) the process for reviewing aged funds (greater than 30 days) held in the trust account has been enhanced to include accounts that hold omnibus funds; and
 - (d) on 17 February 2020, CommSec completed a review of identified omnibus accounts that are setup as trustable accounts within the system and determined there were no other instances of non-client money being held within the CommSec trust account at that point in time. CommSec is currently undergoing a process of 'cleaning up' historical omnibus accounts that are no longer needed or used by closing them.

III. CommSec admitted contraventions of s 798H of the Corporations Act

- 166. At all material times:
 - (a) between 1 March 2015 and 6 May 2018, CommSec was subject to the ASX Rules, including rules 3.5.9 and 3.5.10; and
 - (b) from 7 May 2018 onwards, CommSec was subject to the Securities Markets Rules, including rules 3.5.9 and 3.5.10.

(a) Contraventions of rule 3.5.9

167. Pursuant to rule 3.5.9 of the ASX Rules and Securities Markets Rules, CommSec was required to perform a reconciliation of the aggregate balance held by it at the close of business on each business day in clients' trusts accounts, and the corresponding balance as recorded in their accounting records, with such reconciliations performed the trading day following the trading day to which the reconciliation relates (T+1). Those reconciliations were required by rule 3.5.9(c) to be "accurate in all respects".
168. CommSec admits that, in relation to the Client Money Issues described in Section F(II) at items (a), (b), (c), (d), (e), (g), (h), (i), (k), (l) and (m) above CommSec failed to perform reconciliations that were "accurate in all respects" in contravention of rule 3.5.9(c) of the ASX Rules or Securities Market Rules, as applicable. In respect of some reconciliations, there was more than one inaccuracy as more than one of the issues affected it. In total, 1,237 reconciliations were affected by one or more of the Client Money Issues. Of those:
- (a) 1,021 reconciliations were in respect of days between 1 March 2015 and 12 March 2019; and
 - (b) 216 reconciliations were in respect of days between 13 March 2019 and 23 March 2020.

(b) Contraventions of rule 3.5.10

169. Pursuant to rule 3.5.10 of the ASX Rules and Securities Markets Rules, CommSec was also required to notify ASIC, in writing, within two Business Days if a reconciliation had not been performed in accordance with rule 3.5.9 (rule 3.5.10(b)), or if a reconciliation revealed a deficiency of funds in its trust accounts (rule 3.5.10(d)).
170. CommSec admits that, in respect of the Client Money Issues identified in Section F(II) at items (c), (d), (e), (g), (h), (i) and (m) above, CommSec failed to notify ASIC in writing within two business days, that a reconciliation had not been performed in accordance with rule 3.5.9 of the ASX Rules or Securities Markets Rules as applicable, in contravention of rule 3.5.10(b) of the ASX Rules or Securities Markets Rules, as applicable.
171. CommSec admits that, in respect of the Client Money Issues identified in Section F(II) at items (f) and (j) above, CommSec failed to notify ASIC in writing within two business days, that according to a reconciliation performed pursuant to rule 3.5.9 of the ASX Rules or Securities Markets Rules as applicable, there was a deficiency of funds in its

trust accounts, in contravention of rule 3.5.10(d) of the ASX Rules or Securities Markets Rules, as applicable.

IV. AUSIEX Client Money Issues

(a) \$333,277.06 Trust Surplus

172. On 4 June 2018, AUSIEX identified \$333,277.06 of surplus funds in the AUSIEX Trust account as a result of an investigation into the Trading System trust account calculation (ACTSUM) initiated by AUSIEX.
173. The surplus was made up of 12 lines which had accumulated in the trust account, almost entirely due to the same issue as is described in relation to the \$4,859,286.05 surplus at paragraph [101] (at CommSec item (d) above).
174. The earliest element of the matter was a line (being one of the 12 lines which had accumulated in the trust account contribution to the \$333,277.06 Trust Surplus) booked on 8 November 2017 (being an amount of \$7,281.10).
175. The surplus was corrected via a manual adjustment on 5 June 2018, prior to the third party vendor updating the value in the Trading System database on 9 June 2018.
176. Accordingly, the daily reconciliations of the AUSIEX trust account performed for 8 November 2017 to 4 June 2018 (being 142 business days) were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)
177. On 9 June 2018, AUSIEX deployed a system fix to address the issue.
178. On 10 July 2018, AUSIEX reported the matter to ASIC. This was outside of the two-business day requirement for notification in rule 3.5.10(b).

(b) Margin relating to house error position

179. AUSIEX held a surplus amount in the AUSIEX trust account 35 times between 6 May 2010 and 21 June 2019.
180. This is due to the same issue which affected CommSec (CommSec item (i) above).
181. Between 1 March 2015 and 21 June 2019, there were 18 instances on which this occurred. Of those:
- (a) 17 instances (totalling \$70,661.30) occurred before 13 March 2019; and
 - (b) 1 instance (totalling \$10,705.80) occurred on or after 13 March 2019.

182. Accordingly, 18 daily reconciliations (ie, one for each instance) between 1 March 2015 and 21 June 2019 were not accurate in all respects, in contravention of rule 3.5.9. (This date range includes reconciliations affected by other Client Money Issues.)
183. On 26 June 2019, AUSIEX discovered the issue as part of an ongoing analysis into exchange traded options performed by the Project Rampart team. That same day, AUSIEX implemented a change to the configuration of the house account so that the additional margin was no longer applied to these house positions.
184. On 25 July 2019, AUSIEX notified ASIC of the issue. This was outside of the two-business day requirement for notification in rule 3.5.10(b).

(c) Surplus proceeds from options trades

185. Between 3 June 2013 to 31 May 2019, AUSIEX included surplus proceeds from options trades in daily trustable balance calculations.
186. The issue relates to a failure by AUSIEX to adjust the AUSIEX daily options trustable balance 'funding calculation' following updates made to the Trading System database on 1 June 2013. Following a change made to the Trading System database fields in 2013, the funding calculator failed to retrieve the source data from the Trading System database correctly, in that it included the funds which were proceeds of option sales on the trade day (T) instead of the following day (T+1), which was when the proceeds were received. This resulted in the sale proceeds from options trades being treated as trustable client monies one day earlier than they should have been.
187. On Monday, 3 June 2019, in the context of developing a three-way reconciliation capability as part of Project Rampart, AUSIEX identified the issue and rectified it by way of a manual adjustment. From 3 June 2019, AUSIEX manually adjusted the trustable balance to exclude proceeds of options trades executed on the same day.
188. The issue affected each options trade performed each day during the relevant period. Each daily surplus was corrected overnight as it arose from the amount being treated as trustable one day early, however because new positions were booked each day, there were surplus amounts held in trust across the whole period.
189. Accordingly, daily reconciliations of the AUSIEX trust account performed for 1 March 2015 to 31 May 2019 (being 1,076 business days) were not accurate in all respects, in contravention of rule 3.5.9. Of those:
- (a) 1,021 reconciliations were in respect of days between 1 March 2015 and 12 March 2019; and

- (b) 55 reconciliations were in respect of days between 13 March 2019 and 31 May 2019.

(This date range includes reconciliations affected by other Client Money Issues.)

190. On 12 July 2019, the matter was reported to ASIC. This was outside of the two-business day requirement for notification in rule 3.5.10(b).
191. On 2 September 2019, AUSIEX implemented a fix to its calculation to automatically exclude sale proceeds of options transactions not yet settled.
- (d) \$138,690.09 Trust Surplus

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192. On 1 and 2 May 2017, AUSIEX mistakenly placed non-client monies totalling \$138,690.09 in the AUSIEX trust account. By 19 September 2019, some \$27,923.94 of that money remained in the trust account.
193. This arose from a decision in January 2017 to reimburse a number of issuers of securities that were incorrectly charged CHESSE fees. To address this, in May 2017, AUSIEX issued cheques to the relevant issuers (ie, non-AUSIEX customers) totalling \$138,690.09 (the **Fee Reimbursement Cheques**). AUSIEX followed a standard process to hold funds in respect of the Fee Reimbursement Cheques in trust as part of the 'Unpresented Cheque' total. As each cheque was presented, the AUSIEX trust account balance was correspondingly reduced.
194. However, because the funds were reimbursements to the issuers, who were non-client third parties, and not in connection with a financial service, the funds were not client money under s 981A of the Corporations Act.
195. On 17 September 2019, the unpresented cheques were first identified as potentially not belonging to clients.
196. By 19 September 2019, \$27,923.94 remained in the trust account.. On the same day, AUSIEX transferred \$27,923.94 out of the trust account to the General Account, representing the balance of the 30 unrepresented Fee Reimbursement Cheques.
197. Accordingly, the daily reconciliations of the AUSIEX trust account performed for 1 May 2017 to 18 September 2019 (being 606 business days) were not accurate in all respects, in contravention of rule 3.5.9. Of those:
- (a) 474 days were before 13 March 2019; and
- (b) 132 days were on or after 13 March 2019.

(This date range includes reconciliations affected by other Client Money Issues.)

198. On 20 September 2019, AUSIEX cancelled the 30 unrepresented Fee Reimbursement Cheques. By cancelling the cheques, they were no longer captured on the unrepresented cheque report, thereby avoiding them being included in the trustable amount.
199. On 20 November 2019, AUSIEX reported the issue to ASIC. This was outside of the two-business day requirement for notification in rule 3.5.10(b).
200. As part of the three-way reconciliation process, a manual check has been included in the daily trust calculation process whereby the sum of all unrepresented cheques is compared to the sum of unrepresented cheques for client accounts only. As a result, future cheques issued for non-clients will be flagged for review on the same day.

V. AUSIEX admitted contraventions of s 798H of the Corporations Act

201. At all material times:

- (a) between 1 March 2015 and 6 May 2018, AUSIEX was subject to the ASX Rules, including rules 3.5.9 and 3.5.10; and
- (b) from 7 May 2018 onwards, AUSIEX was subject to the Securities Markets Rules, including rules 3.5.9 and 3.5.10.

(a) Contraventions of rule 3.5.9

202. Pursuant to rule 3.5.9 of the ASX Rules and Securities Markets Rules, AUSIEX was required to perform a reconciliation of the aggregate balance held by it at the close of business on each business day in clients' trusts accounts, and the corresponding balance as recorded in their accounting records, with such reconciliations performed the trading day following the trading day to which the reconciliation relates (T+1). Those reconciliations were required by rule 3.5.9(c) to be "accurate in all respects".

203. AUSIEX admits that, in relation to the Client Money Issues described in Section F(IV) at items (a) through (d) above, AUSIEX failed to perform reconciliations that were "accurate in all respects" in contravention of rule 3.5.9(c) of the ASX Rules or Securities Market Rules, as applicable. In total, 1,153 reconciliations affected by one or more of the Client Money Issues. Of those:

- (a) 1,021 reconciliations were in respect of days between 1 March 2015 and 12 March 2019; and
- (b) 132 reconciliations were in respect of days between 13 March 2019 and 18 September 2019.

(b) Contraventions of rule 3.5.10

204. Pursuant to rule 3.5.10(b) of the ASX Rules and Securities Markets Rules, AUSIEX was also required to notify ASIC, in writing, within two Business Days if a reconciliation had not been performed in accordance with rule 3.5.9.
205. AUSIEX admits that, in respect of the Client Money Issues identified in Section F(IV) at items (a) to (d) above, AUSIEX failed to notify ASIC in writing within two business days, that a reconciliation had not been performed in accordance with rule 3.5.9 of the ASX Rules or Securities Markets Rules as applicable, in contravention of rule 3.5.10(b) of the ASX Rules or Securities Markets Rules, as applicable.

VI. Project Rampart

206. CommSec and AUSIEX jointly established a program known as Project Rampart to review systems and processes regarding trust reconciliation and to remediate their trust account issues. Project Rampart was established around August 2018, following a joint letter by CommSec and AUSIEX to ASIC dated 10 July 2018 outlining a number of the Client Money Issues (including details of CommSec in Section F(II) at items (a), (b), (c) and (d) and AUSIEX in Section F(IV) at item (a) above).
207. The target areas of Project Rampart were identified based on initial investigation of the incidents outlined on 10 July 2018, including the implementation of new exception reporting to support existing controls, and system fixes to address platform deficiencies.
208. Working groups were formed across multiple teams including CommSec IT, Program Management, Product Risk, Compliance and Market Operations.
209. CommSec and AUSIEX provided a presentation to ASIC about Project Rampart on 30 August 2018. At that time, the project was centred on the following streams (although these have developed over time):
- (a) Stream A: Current changes to Daily Trust Calculation
 - (b) Stream B: Aged Creditor Balances in Trust
 - (c) Stream C: Upgrading the Trading System knowledge & support
 - (d) Stream D: Review and upgrade procedure to be Fit for Purpose
 - (e) Stream E: Review of the Trading System Change & Test process
 - (f) Stream F: E2E Control Environment Review
210. AUSIEX and CommSec have since provided periodic status updates to ASIC and ASX in a combined report.

211. Whilst ASIC agreed to receive any updates volunteered by CommSec and AUSIEX, ASIC did not have a formal, active role in the oversight and monitoring of the work taken for Project Rampart. Accordingly, to date, ASIC has neither endorsed nor approved any aspect of the work undertaken as part of Project Rampart.

(a) Client Money Governance

212. In April 2019, CommSec and AUSIEX developed a new Client Money Governance Model, and created a new role of 'Senior Manager Client Money' responsible for overseeing and ensuring the model is executed and adhered to. Since that time additional resourcing has been added and the team supporting client money oversight activities now includes an Executive Manager, two Senior Managers and a Manager alongside other operational and risk resources.

213. The objectives of the Client Money Governance Model are as follows:

- (a) to define the governance model;
- (b) to outline how CommSec and AUSIEX are currently managing their client money obligations;
- (c) to detail how CommSec and AUSIEX comply with client money obligations, particularly with respect to the data they rely upon to calculate their obligations; and
- (d) to provide clarity for client money related roles and responsibilities.

(b) KPMG engagement

214. As part of Project Rampart, KPMG were engaged in December 2018 as an independent expert to advise CommSec and AUSIEX in relation to their client monies governance, processes and controls to comply with relevant regulatory obligations, provide recommendations for enhancement and to review the design effectiveness of the implemented recommendations.

215. In January 2020, CommSec and AUSIEX expanded KPMG's engagement to include additional assessment in relation to:

- (a) the adequacy and effectiveness of the three-way reconciliation tool design, associated processes, controls, documented procedures and business continuity arrangements;
- (b) the processes and controls in place to prevent monies required to be held in trust from being paid into or held in the General Account, including unidentified monies;

- (c) the policies, procedures, processes and controls in place in relation to affiliated nominee accounts and the treatment of monies that pass through these accounts;
- (d) arrangements for dealing with client segregation requirements of the ASX Settlement and ASX Clear Operating Rules; and
- (e) periodic post-implementation assessments of the governance framework, the reconciliation tool, and of the actions taken in response to KPMG's recommendations to consider the appropriateness and sustainability of changes.

(c) Three-way reconciliation tool

216. On 1 October 2020, CommSec and AUSIEX implemented the three-way reconciliation tool as the primary method for determining the amount of funds required to be held in the CommSec and AUSIEX trust accounts. The three-way reconciliation reconciles (1) the trust account general ledger balance according to the Trading System trust table, (2) the balance according to the trust account bank statement, and additionally, (3) client balances. Well prior to 1 October 2020, a beta version of the three-way reconciliation tool operated in parallel with the pre-existing arrangements.

(d) Client Money Simplification Project

217. The completion of KPMG's recommendations will be tracked in a Client Money Simplification Project (the **CMS Project**) which has now been commenced by CommSec and AUSIEX. The CMS Project follows the remediation work completed by Project Rampart and is targeting the continued uplift of CommSec and AUSIEX's end-to-end client monies environments. The Project is scheduled to be completed by the end of FY21.

G. TRADE CONFIRMATIONS ISSUES

I. Background

(a) Introduction

218. At all material times, CommSec and AUSIEX were obliged to give a confirmation to a client in respect of each market transaction entered into on the client's instructions (rule 3.4.1(1) of the ASX Rules prior to 6 May 2018, and subsequently, rule 3.4.1(1) of the Securities Markets Rules).

219. Confirmations issued under rule 3.4.1(1) had to contain certain content set out in rule 3.4.1(3) of the ASX Rules and its successor provision, rule 3.4.1(3) of the Securities Market Rules.

220. On 21 September 2018, CommSec and AUSIEX notified ASIC of a number of issues relating to inaccuracies in exchange traded options (ETO) confirmations provided to customers, some of which they concede amounted to contraventions of s 798H of the Corporations Act, by reason of contravention of either rule 3.4.1 of the Securities Markets Rules or its predecessor, rule 3.4.1 of the ASX Rules. Subsequent to that, additional notifications to ASIC were made by each of CommSec and AUSIEX relating to additional inaccuracies affecting ETO or equities confirmations and failures to send ETO or equities confirmations. The issues affecting CommSec trade confirmations are described in further detail at paragraphs [237] to [323] below and those affecting AUSIEX at paragraphs [336] to [430] below (together, the **Trade Confirmations Issues**).

221. The Trade Confirmations Issues affect confirmations in respect of either ETOs or equities. The issues largely relate to inaccuracies in the content of confirmations issued to customers or in some instances the failure to send confirmations to customers (although there are some issues relating to record-keeping). The issues affecting accuracy or failure to send confirmations were largely caused by errors in the coded logic, system specifications or configuration, or account settings in the information technology systems used to generate confirmations. For many of these issues, they were not detected due to inadequate control process for monitoring trade confirmations. ASIC does not allege, and there is no evidence to indicate that, the Trade Confirmations Issues caused any financial loss to clients.

(b) ETO confirmations

222. An ETO is a contract between two parties which gives the buyer (the taker) the right, but not the obligation, to buy or sell shares underlying the option at a predetermined price, on or before a predetermined date. To acquire this right, the taker pays a premium to the seller (writer) of the contract. The same concepts generally apply to options over an index.

223. ETOs are standardised contracts traded on the ASX's options market. The ASX determines the key contract specifications for each series of ETOs listed, including:

- (a) the underlying security or underlying index - ETOs traded on the ASX options market are only available for certain securities and the S&P ASX 200 share price index (commonly referred to as XJO). These securities are referred to as underlying securities or underlying shares;
- (b) contract size – for stock options, the standardised contract size is 100 underlying shares, which means that one option contract generally represents 100

underlying shares. For index options, the contract value is fixed at a certain number of dollars per index point (for example, \$10 per index point) and the size of the contract is equal to the index level x the dollar value per index point (for example, for an index at 6,000 points, one contract would be 6,000 x \$10 = \$60,000);

- (c) expiry day – options expire on standard expiry days set by ASX Clear. If an ETO is to be exercised, it must be exercised on or before that day. On the expiry day, all unexercised options in a particular series expire and it is the last day of trading for that particular series. A full list of all options series available for trading and an expiry day calendar are available on the ASX website; and
 - (d) exercise (or strike) prices – the exercise price is the predetermined buying or selling price for the underlying shares if the option is exercised. ASX Clear sets the exercise prices for all options listed on the ASX options market with a range of exercise prices available for options on the same expiry.
224. An option contract comes into existence when a seller (writer) and a buyer (taker) agree on the option price and the contract is registered with ASX Clear. The establishment of a contract is referred to as an *open position*.
225. Once the buyer (taker) has an open position, the buyer has three alternatives:
- (a) the buyer can close out the position by writing an option in the same series as originally taken and instructing their brokerage to 'close out' the position;
 - (b) the buyer can exercise the option;
 - (c) the buyer can hold the option to expiry and allow it to lapse.
226. The seller (writer) has two alternatives:
- (a) close out the option prior to expiry;
 - (b) let the option go to expiry day. The option will either be exercised by the buyer (taker) or expire worthless.
227. Where a buyer instructs its broker to exercise an option, ASX Clear will randomly select a seller (writer) in that series of options and on the following day, will notify that writer that their written (sold) position has been exercised. The random allocation by ASX Clear of an exercise obligation to a seller (writer) is referred to as an assignment.
228. Upon exercise or assignment, ETOs can be either deliverable or cash settled. Equity options are deliverable (ie with delivery of the underlying security), whilst index options

are cash settled against the Opening Price Index Calculation (OPIC) as calculated on the expiry date.

229. At all material times, CommSec and AUSIEX had a practice of issuing ETO confirmations to customers (although this did not occur where there was an issue causing a failure to send confirmations) which contained two sections:

- (a) "trading confirmation" of transactions in ETOs (ie the transaction which occurs when the option position is opened or where a "close out" transaction occurs) – being confirmations which are required to be issued under rule 3.4.1(1); and
- (b) "liquidation advice" which confirm the expiry, exercise or assignment of the option, or the "close out" of an option) – being confirmations which are not in respect of a market transaction and, accordingly, are not required to be issued under rule 3.4.1(1).

(c) Background to generating and delivering ETO confirmations

230. Prior to November 2013, CommSec used the Trading System to generate and deliver ETO trade confirmations. Between around 2010 to 2012, CommSec embarked on a project to improve its trading platform, CoreTX, including developing functionality to generate and deliver ETO trade confirmations to customers.

231. Between June 2009 to December 2012, AUSIEX embarked on a project to progressively migrate its customers from three different trading platforms and systems into a single platform and system, CoreTx.

232. In developing the functionality of Core Tx, CommSec and AUSIEX defined the specifications and requirements in relation to the trade confirmation content, format, triggers to generate, timing of production and delivery (amongst other things).

233. CommSec and AUSIEX ceased using the Trading System and started using CoreTX to generate ETO trade confirmations for customers in or around November 2013 for CommSec, and in or around December 2012 for AUSIEX.

234. CommSec and AUSIEX had access to the Trading System tables, which were used to populate the ETO trade confirmations generated through CoreTX. CommSec and AUSIEX:

- (a) used coded logic to obtain and map data to be included in the ETO trade confirmations from the Trading System data tables (**the Trading System Data**) to CommSec's and/or AUSIEX's own reporting data tables; and

- (b) where required, used coded logic to transform the Trading System Data in order to present the information on the ETO trade confirmations in line with the regulatory specifications.

(d) Identification of trade confirmation issues

235. On 1 March 2018, a customer query regarding a confirmation prompted CommSec and AUSIEX to conduct a joint investigation in relation to ETO confirmations issues across CommSec and AUSIEX. This included a review of sample confirmations against the relevant regulatory requirements. The joint review initially led to the identification of the Strike Price Issue, the Contract Size Issue, the Traded Value Issue and the OPIC Issue described below. On 21 September 2018, the identified ETO trade confirmations issues as of that date were reported to ASIC.

236. In October 2018, CommSec and AUSIEX instigated an internal project known as Project Umbrella (discussed in detail below in Section G(VI)). Further investigations conducted as part of Project Umbrella led to additional issues being notified to ASIC from 21 September 2018.

II. CommSec Trade Confirmation Issues

237. CommSec trade confirmations were affected by the following issues:

(a) ETOs:

- i. There were three issues affecting the accuracy of ETO trade confirmations which gave rise to contraventions of rule 3.4.1(3) – namely, the Strike Price Issue, Contract Size Issue and Rebookings Issue (the latter which also gave rise to contravention of the record-keeping obligation in rule 4.2.1(1)). There was one issue resulting in a failure to send ETO trade confirmations in contravention of rule 3.4.1(1).
- ii. There were five other issues which affected the accuracy of confirmations relating to ETOs but were not in respect of market transactions in ETOs and therefore did not give rise to any contravention of the ASX Rules or the Securities Markets Rules.

- (b) Equities: There was one issue affecting the accuracy of equities trade confirmations in contravention of rule 3.4.1(3) and one issue resulting in failure to send equities trade confirmations in contravention of rule 3.4.1(1).

238. By reason of the conduct contravening rules 3.4.1(1), 3.4.1(3) and 4.2.1(1), CommSec failed to have appropriate supervisory procedures to ensure compliance with those rules, in contravention of rule 2.1.3.
239. In relation to the issues affecting accuracy of ETO confirmations, there were some trade confirmations affected by one or more of the Strike Price Issue, Contract Size Issue and Rebookings Issue (being the three issues giving rise to contraventions of rule 3.4.1(3)). In total, between 1 March 2015 and 15 June 2019, there were 187,891 ETO trade confirmations affected by one or more of those three issues. Of those:
- (a) 176,796 trade confirmations were issued by CommSec between 1 March 2015 and 12 March 2019; and
 - (b) 11,095 trade confirmations were issued by CommSec between 13 March 2019 and 15 June 2019.
240. There were some ETO confirmations which were affected by one or more of the eight accuracy issues (including confirmations not in respect of market transactions). In total, the number of confirmations affected by one or more of the eight issues was 220,750 confirmations between 1 March 2015 and 30 November 2019, although many of these confirmations are not in respect of market transactions.
- (a) **Strike Price Issue**
-
241. Between 8 August 2014 and 15 June 2019, the strike price (also known as the exercise price) provided on a number of trade confirmations issued by CommSec was incorrectly shown as "0" instead of the correct strike price (the **Strike Price Issue**).
242. CommSec identified the Strike Price Issue in March 2018. The cause of the Strike Price Issue was that the coded logic used to obtain the strike price data for the ETO trade confirmations referred to the incorrect Trading System Data.
243. The Strike Price Issue had previously been the subject of several client complaints or queries between at least August 2017 and January 2018.
244. CommSec reported the Strike Price Issue to ASIC on 21 September 2018.
245. The Strike Price Issue was rectified on 15 June 2019 by implementing a system fix so that the coded logic used to obtain the strike price was updated to reference the correct Trading System Data.
246. A total of 156,110 trade confirmations were affected by the Strike Price Issue between 8 August 2014 and 15 June 2019 (which includes confirmations affected by other ETO confirmation issues). Of those, there were:

- (a) 130,461 trade confirmations between 1 March 2015 and 12 March 2019;
 - (b) 7,975 trade confirmations between 13 March 2019 and 15 June 2019.
247. The Strike Price Issue affected confirmations issued to customers in respect of market transactions in ETOs, being the transaction to open or close the option position.
248. During the relevant period, if the customer placed the order online, the correct strike price was displayed on the ETO order pad online at the time of order placement. The correct strike price was also shown on daily position statements which show open positions issued to customers at least from September 2017.
- (b) **Contract Size Issue**
-
249. Between 31 December 2014 and 15 June 2019, the contract size for S&P/ASX 200 (commonly referred to as **XJO**) index option provided on trade confirmations was incorrect. The trade confirmations described the contract size as "10 Shares per lot", where it should have been described as "\$10 per point" (the **Contract Size Issue**).
250. The first known occurrence was in a trade confirmation issued by CommSec dated 31 December 2014.
251. The Contract Size Issue was identified in March 2018. CommSec identified that the issue had been caused by CommSec incorrectly specifying to the third party vendor that the contract size in the Trading System Data (which is then used by CommSec to populate trade confirmations) should be described as "10 shares per lot" rather than "\$10 per point".
252. CommSec reported the Contract Size Issue to ASIC on 21 September 2018. CommSec rectified the issue on 15 June 2019 by implementing a system fix which corrected the XJO index option contract size to "\$10 per point".
253. A total of 82,135 trade confirmations were affected by the Contract Size Issue between 31 December 2014 and 15 June 2019 (which includes confirmations affected by other ETO confirmation issues). Of those, there were:
- (a) 74,464 trade confirmations between 1 March 2015 and 12 March 2019;
 - (b) 4,965 trade confirmations between 13 March 2019 and 15 June 2019.
254. The Contract Size Issue affected confirmations issued to customers in respect of market transactions in ETOs, being the transaction to open or close the option position.
255. During the period between 1 March 2015 and June 2019, the correct contract size for XJO index options was contained in the CommSec ETO Product Disclosure Statement

the customer is required to acknowledge they have read as part of the account origination process.

(c) Traded Value Issue

256. Between 25 September 2014 and 7 September 2019, confirmations issued by CommSec for expired short option positions showed the "Traded Value" as a debit when it should have been shown as a credit (the **Traded Value Issue**).
257. The Traded Value is the consideration paid or received at the time the position is opened (where it appears on the "trading confirmation" section it is exclusive of fees and where it appears on the "liquidation advice" section it is inclusive of fees) (**Traded Value**). At the time the position was opened, a trade confirmation was issued by CommSec with the correct Traded Value for the sell transaction (ie a sell transaction to open the short position). At the time of option position expired, a confirmation was issued by CommSec showing in the "Liquidation Advice - Expired" section, the incorrect Traded Value (ie the value of the position when it was opened). No market transaction occurred upon option expiry.
258. As the Traded Value Issue affected confirmations which were not in respect of market transactions, it is not an issue which gives rise to contravention of rule 3.4.1 of the Market Integrity Rules.
259. The Traded Value Issue was first identified in March 2018.
260. The Traded Value Issue arose because the Trading System Data previously quoted positive Traded Values for buy and sell trades. In this context, CommSec applied a logic to multiply sell trades by (-1), with the effect that the Traded Value would show a credit (CR) on the ETO trade confirmations. The Trading System Data subsequently changed to negative Traded Values for sell trades. CommSec inadvertently failed to remove the coded logic of multiplying by (-1). This led to the Traded Value showing a debit (DR) on the ETO trade confirmations.
261. CommSec reported the Traded Values Issue to ASIC on 21 September 2018.
262. CommSec implemented a system fix in December 2018 so that if the Trading System Data was using negative Traded Values for sell trades, then the CommSec system would keep the Traded Value as is. Conversely if the Trading System Data used positive Traded Values for sell trades, then the CommSec system would multiply the sell trades by (1). The effect of this is that all sell transactions appeared as credit entries in CommSec's database. A further system fix to rectify the issue was implemented on 7 September 2019.

263. A total of 39,722 confirmations were affected by the Traded Value Issue between 25 September 2014 and 7 September 2019 (which includes confirmations affected by other ETO confirmation issues). Of those, there were:

- (a) 35,885 confirmations between 1 March 2015 and 12 March 2019;
- (b) 161 confirmations between 13 March 2019 and 7 September 2019.

(d) OPIC Issue

264. Between 21 September 2017 and 10 August 2019, confirmations issued by CommSec for cash settlement following an assignment or exercise of a XJO (ie S&P ASX 200) index option did not display the opening price index calculation for XJO index option (the **OPIC Issue**).

265. Upon the exercise or assignment of a XJO index option position, there is a cash settlement transaction. The settlement price is based on the opening price on the ASX of each stock in the underlying index on the morning of the expiry date. As the stocks in the index open, the first trading price of each stock is recorded. Once all stocks in the index have opened, an index calculation is made using these opening prices. The process is called the Opening Price Index Calculation (**OPIC**). Shortly afterwards, the OPIC is confirmed to ASX and ASX Clear and is announced to the market. The OPIC is posted onto the ASX website.

266. As the OPIC value is published on the expiry day on the ASX website and is not the price which the customer pays or receives on settlement, CommSec was not required to disclose the OPIC value in confirmations.

267. The OPIC Issue affected confirmations issued to confirm the cash settlement transaction resulting from an assignment or exercise of a XJO index option. The cash settlement is not a market transaction, and therefore the issue does not give rise to a contravention of rule 3.4.1.

268. The OPIC Issue was identified in March 2018. CommSec identified that the issue arose because the OPIC value for XJO transactions was not addressed in CommSec's functional specifications for trading confirmations.

269. CommSec reported the OPIC Issue to ASIC on 21 September 2018. CommSec rectified the issue on 10 August 2019 by adding the following explanatory wording in confirmations: "*For cash settlement of XJO Index Options, the ASX Opening Price Index Calculation (OPIC) value is available from the ASX website.*"

270. A total of 1,868 confirmations were affected by the OPIC Issue (which includes confirmations affected by other ETO confirmation issues), with:

- (a) 1,413 confirmations between 21 September 2017 and 12 March 2019;
- (b) 455 confirmations between 13 March 2019 and 10 August 2019.

(e) Rebookings Issue

271. Between 27 August 2014 and 1 December 2018, trading confirmations for rebooked trades through CommSec contained an incorrect total value amount on the confirmation. This arose from the rebooked transaction being displayed multiple times on the confirmation and because when trades were reversed, the brokerage and ASX Clear fees for rebooked trades or trade reversals showed as a debit and not a credit (the **Rebookings Issue**).

272. The Rebookings Issue affected confirmations issued to customers in respect of market transactions in ETOs, except where the trade in the ETO was rebooked at the request of the client (for example, where a client requests that CommSec rebook the trade to different account of the client).

273. Notwithstanding the inaccuracy in the confirmations, customers were charged accurately and not overcharged.

274. The Rebookings Issue was identified on 30 April 2018, and resolved on 1 December 2018 by an IT system fix so that brokerage and ASX Clear fees for rebooked trades or trade reversals was corrected to show a credit value.

275. CommSec reported the Rebookings Issue to ASIC on 21 September 2018.

276. The Rebookings Issue affected a total of 742 trade confirmations between 27 August 2014 and 1 December 2018 (excluding 464 trades which were rebooked at the request of the client). Of the 742 trade confirmations, there were 664 trade confirmations affected on or after 1 March 2015. These figures include confirmations affected by more than one ETO confirmation issue.

(f) Partially Assigned/Exercised Issue

277. Between 14 November 2018 and 15 June 2019, confirmations issued by CommSec to clients recording the partial assignment or exercise of an option position had the incorrect "Traded Value" under the "Liquidation Advice" Assignment/Exercise section (the **Partially Assigned/Exercised Issue**). At the time the position was opened, the trade confirmation issued by CommSec contained the correct Traded Value. At the time of partial assignment or exercise, the confirmation issued by CommSec showed an

incorrect Traded Value as the value was not proportionate to the number of contracts assigned or exercised. (As noted above, the "Traded Value" is the value of the position when it was opened.) The confirmation issued upon partial assignment or exercise is not a confirmation in respect of a market transaction, and therefore the issue does not give rise to a contravention of rule 3.4.1.

278. The issue was identified on 22 November 2018 as part of the Project Umbrella review and testing of customer statements.
279. The issue arose because CommSec mistakenly specified to the third party vendor that the Trading System Data should calculate the Traded Value to be stated on the confirmation issued on partial assignment or exercise, based on the total number of open contracts, in circumstances in which the data table should have calculated the Traded Value based on the number of assigned or exercised contracts.
280. CommSec reported the Partially Assigned/Exercised Issue to ASIC on 30 November 2018. The issue was rectified on 15 June 2019 by CommSec requesting that the third party vendor make changes to the Trading System Data.
281. A total of 1,254 confirmations were affected by the Partially Assigned/Exercised issue (which includes confirmations affected by other ETO confirmation issues), with:
- (a) 804 confirmations between 14 November 2018 and 12 March 2019;
 - (b) 450 confirmations between 13 March 2019 and 15 June 2019.
- (g) Partially Expired Issue

282. Between 21 September 2017 and 15 June 2019, confirmations issued to clients had the incorrect "Traded Value" under the "Liquidation Advice" Expired section in the confirmation issued for positions that were partially expired (the **Partially Expired Issue**). A "partial expiry" occurs where the customer has liquidated part of its option position (eg by exercising the option), and the balance of the position expires. At the time the position was opened, a trade confirmation was issued with the correct Traded Value. At the time of partial expiry of the option position, a confirmation was issued showing the incorrect Traded Value as the value was not proportionate to the number of contracts expired. The confirmation issued upon partial expiry is not a confirmation in respect of a market transaction, and therefore this issue does not give rise to a contravention of rule 3.4.1.

283. The issue was identified on 26 November 2018 during testing conducted as part of Project Umbrella. CommSec identified that the issue arose because CommSec mistakenly specified with the third party vendor that the Trading System Data should

calculate the Traded Value based on the total number of open contracts, in circumstances in which the data table should calculate the Traded Value based on the number of partially expired contracts.

284. CommSec reported the Partially Expired Issue to ASIC on 30 November 2018. The issue was rectified on 15 June 2019 by CommSec requesting that the third party vendor make changes to the Trading System Data.
285. A total of 1,101 confirmations were affected by the Partially Expired Issue (which includes confirmations affected by other ETO confirmation issues), with:
- (a) 933 confirmations between 21 September 2017 and 12 March 2019;
 - (b) 168 confirmations between 13 March 2019 and 15 June 2019.

(h) GST Issue

286. Between 29 September 2016 and 30 November 2019, for confirmations issued to clients by CommSec where there had been an assignment or exercise transaction, the "Total GST for this invoice" value was incorrectly stated (**GST Issue**).
287. As the GST Issue affected confirmations for the assignment or exercise of an option which are not confirmations in respect of a market transaction, this issue does not give rise to a contravention of rule 3.4.1.
288. Notwithstanding the error on the face of the trade confirmations, customers were charged the correct GST amounts.
289. The issue was identified on or around 1 March 2019 during testing conducted as part of Project Umbrella. The issue arose because the coded logic used to generate the confirmations was incorrect as it calculated the GST on ASX Clear fees to open/close the position. This resulted in the total GST invoice amount being incorrectly stated.
290. CommSec reported the GST Issue to ASIC on 28 March 2019. CommSec implemented an interim system fix on 7 September 2019 followed by a permanent system fix which was completed by 30 November 2019.
291. A total of 20,260 confirmations were affected by the GST Issue (which includes confirmations affected by other ETO confirmation issues), with:
- (a) 15,747 confirmations between 29 September 2016 and 12 March 2019;
 - (b) 4,513 confirmations between 13 March 2019 and 30 November 2019.

(i) Equities Crossing Disclosure Issue

292. At all material times, where a market transaction involved a crossing (ie where CommSec acts on behalf of both buying and selling clients to that transaction) CommSec was obliged to include a statement to that effect in the trade confirmation issued to the client (rule 3.4.1(3)(f) of the ASX Market Rules and Securities Market Rules). Between 24 April 2017 and 29 April 2019, equities trade confirmations issued by CommSec to clients did not contain a crossing disclosure in circumstances where CommSec had acted on behalf of both the buying and selling clients to that transaction (the **Equities Crossing Disclosure Issue**). CommSec did not act as principal on any of those transactions.
293. The matter was caused by the interaction of the CoreTX system and the Trading System used by CommSec, following a system release in the Trading System on 24 April 2017 which caused the Trading System to take longer populating the contract note table within the database with the effect that the CoreTX process that generated the trade confirmations intermittently commenced before the Trading System had completed populating the contract note table.
294. The issue was identified on 30 March 2019 during monthly control assurance testing of the content of equities trade confirmations. CommSec rectified the issue by implementing a code change on 29 April 2019.
295. CommSec reported the Equities Crossing Disclosure Issue to ASIC on 16 May 2019, providing an update on 11 June 2019.
296. Between 19 July 2019 and 23 July 2019, CommSec notified affected customers.
297. A total of 17,307 equities trade confirmations, sent to 12,896 CommSec client accounts, were affected by the Equities Crossing Disclosure Issue, with:
- (a) 16,624 trade confirmations between 24 April 2017 and 12 March 2019;
 - (b) 683 trade confirmations between 13 March 2019 and 29 April 2019.

(j) Equities Trade Confirmations Issue

298. CommSec failed to issue trade confirmations in relation to trades in cash market products (ie equities) to customers (the **Equities Trade Confirmations Issue**) as follows:
299. Between April 2012 and 6 November 2019, CommSec failed to send 18,005 equities trade confirmations to customers. Of these:

- (a) 677 were in relation to trade confirmations that should have been sent between 1 March 2015 and 12 March 2019;
 - (b) 52 were in relation to trade confirmations that should have been sent between 13 March 2019 and 6 November 2019;
300. Following the execution of an equities trade, CoreTX imports data in relation to the transaction from the Trading System, and generates an email with the electronic trade confirmation to be sent to the customer. The email (along with the electronic trade confirmation) is then sent to Ironport, which is a server used to send the email (along with the electronic trade confirmation) to the customer.
301. Since 7 March 2013, a daily reconciliation report has been used to identify:
- (a) trade confirmations which potentially had not been imported to CoreTX from the Trading System;
 - (b) trade confirmations which CommSec potentially had not attempted to send electronically to the customer; or
 - (c) trade confirmations for which CommSec had received an email bounce-back from the customer's email address.
302. Whilst there have been different iterations of the daily reconciliation report since 2013, the daily reconciliation report has consistently comprised of two key spreadsheets titled:
- (a) CNotesNotattemptedToSendExcludingInvalidRecords (Spreadsheet 1); and
 - (b) CNotesNotattemptedToSend (Spreadsheet 2).
303. Spreadsheet 1 should have been a filtered version of Spreadsheet 2 identifying the equities trade confirmations that CommSec failed to send to clients the previous trading day excluding irrelevant records.
304. In May 2019, CommSec commenced a process of uplifting the electronic trade confirmation monitoring and exception process with the purpose of aligning the processes between CommSec and AUSIEX.
305. From 26 October 2019 to 4 November 2019, the daily reconciliation report was updated and tested against the previous version of the daily reconciliation reports.
306. On 5 November 2019, CommSec identified potential issues in relation to the previous version of the daily reconciliation reports – namely, that:
- (a) the filtering of records to create Spreadsheet 1 of the previous version of the daily reconciliation reports was flawed, in that Spreadsheet 1 did not capture all of the

electronic equities trade confirmations that had not been sent to CommSec clients. However, all of the unsent electronic trade confirmations were contained in Spreadsheet 2; and

- (b) only Spreadsheet 1 was being consistently reviewed. Spreadsheet 2 was not consistently reviewed by CommSec Technical Support as it was erroneously assumed by CommSec Technical Support that Spreadsheet 1 contained all of the equities trade confirmations that had not been sent by email to CommSec's customers.

307. Those issues meant that the failure to electronically send confirmations was not being identified upon review of the reconciliation reports and manually addressed. The other cause of the failure to send electronic trade confirmations was that the data fields in the client profiles in CoreTX contained incomplete data, such as in the following circumstances:

- (a) there was no preferred contact selected on account level;
- (b) there was no preferred email address recorded at either the client level or account level for some clients who elected to receive trade confirmations electronically; or
- (c) there was no email address recorded in the Contract Note Subscription field for clients who had subscribed to receive electronic contract notes.

308. CommSec customers who placed equities trades online, via the phone or assisted by the branch were able to access trade confirmations dating back to 2011 on the online trading platform.

309. From 5 November 2019, CommSec introduced an updated daily reconciliation report and began to monitor that report for failures to send electronic trade confirmations. The updated reconciliation report showed:

- (a) trade confirmations which potentially were not imported to CoreTX from the Trading System;
- (b) trade confirmations which CommSec potentially had not attempted to send electronically to the customer;
- (c) trade confirmations for which CommSec received a bounce-back message from the customer's email address; and
- (d) trade confirmation reversals which occur when a trade has been reversed and confirmation of the reversal is required to be sent to the customer.

310. CommSec Technical Support was provided with training with respect to monitoring the updated daily reconciliation report in October 2019.
311. On a daily and ongoing basis since 5 November 2019:
- the updated reconciliation report reconciles all trade confirmations sent from 5am on the previous trading day, to 5am on the current day;
 - CommSec Technical Support monitors the updated daily reconciliation report for failures to send electronic trade confirmations to customers by email; and
 - where required, corrects the client's profile and manually resends the trade confirmation to the customer.
312. Following the introduction of the updated reconciliation report, CommSec Technical Support continued to monitor the updated daily reconciliation report alongside the previous version of the daily reconciliation report to identify any problems with the updated daily reconciliation report.
313. CommSec reported the Equities Trade Confirmations Issue to ASIC on 14 February 2020.
314. The number of equities trade confirmations not sent for each relevant calendar year from April 2012 onwards and that number as a proportion of the total number of CommSec domestic equity trade confirmations issued within each calendar year is set out below.

	2012	2013	2014	2015	2016	2017	2018	2019
Number of Affected Trade Confirmations	11,160	5,212	841	294	117	161	154	66
Proportion Affected	0.320 %	0.132 %	0.022 %	0.006 %	0.002 %	0.003 %	0.003 %	0.001 %

(k) Rebooked Trades Confirmations Issue

315. Between 1 April 2012 and 23 October 2019, CommSec failed to send ETO confirmations to customers where the trade was rebooked on T+1 (the **Rebooked Trades Confirmations Issue**).

316. When an ETO trade occurs (T-0), a trade confirmation is generated and sent to the customer on the next business day (T+1). On occasion, trades which have been originally booked on T-0 need to be amended on T+1 ("rebooking").
317. CommSec did not re-issue trading confirmations to the customers although a change in booking occurred.
318. A confirmation in respect of a rebooked trade occurring on T+1 is a confirmation in respect of a market transaction, save where the trade in the ETO was rebooked at the request of the client (for example, where a client requests that CommSec rebook the trade to different account of the client).
319. The Rebooked Trades Confirmation Issue involved a failure to send 728 ETO trade confirmations between 1 April 2012 and 23 October 2019. Of these:
- (a) 432 were in relation to trade confirmations that should have been sent between 1 March 2015 and 12 March 2019; and
 - (b) 45 were in relation to trade confirmations that should have been sent between 13 March 2019 and 23 October 2019.
320. The Rebooked Trades Confirmations Issue was first identified on 16 October 2018.
321. The Rebooked Trades Confirmations Issue was rectified on 23 October 2019 with a manual process, and an automated process was implemented on 17 October 2020.
322. CommSec reported the Rebooked Trades Confirmation Issue to ASIC on 14 August 2020.
- (l) **Summary of CommSec Trade Confirmation Issues**

323. A summary of the issues in respect of trade confirmations is set out in the table below, including whether the issue relates to ETOs or equities, whether the issue relates to inaccuracy in content of confirmations or failure to issue confirmations or record-keeping, whether or not the confirmations affected by each issue relate to a market transaction, and the relevant provision of the Market Integrity Rules which CommSec admits has been contravened, if any.

Issue	Name of the issue	Product	Nature of the issue	Whether affected confirmations relate to a market transaction?	Admitted contravention of Market Integrity Rules (if any)

A	Strike Price Issue	ETO	Inaccuracy	Yes	Rule 3.4.1(3) Rule 2.1.3
B	Contract Size Issue	ETO	Inaccuracy	Yes	Rule 3.4.1(3) Rule 2.1.3
C	Traded Value Issue	ETO	Inaccuracy	No	-
D	OPIC Issue	ETO	Inaccuracy	No	-
E	Rebookings Issue	ETO	Inaccuracy	Yes, where the trade was not booked at the request of the client	Rule 3.4.1(3) Rule 2.1.3 Rule 4.2.1(1)
F	Partially Assigned/ Exercised Issue	ETO	Inaccuracy	No	-
G	Partially Expired Issue	ETO	Inaccuracy	No	-
H	GST Issue	ETO	Inaccuracy	No	-
I	Equities Crossing Disclosure Issue	Equities	Inaccuracy	Yes	Rule 3.4.1(3) Rule 2.1.3
J	Equities Trade Confirmations Issue	Equities	Failure to issue	Yes	Rule 3.4.1(1) Rule 2.1.3
K	Rebooked Trade Confirmations Issue	ETO	Failure to issue	Yes, where the trade was not booked at the request of the client	Rule 3.4.1(1) Rule 2.1.3

III. CommSec admitted contraventions of s 798H of Corporations Act

(a) Contraventions of rule 3.4.1

324. At all material times:

- (a) between 1 March 2015 and 6 May 2018, pursuant to rule 3.4.1 of the ASX Rules; and
 - (b) from 7 May 2018 on, pursuant to rule 3.4.1 of the Securities Markets Rules,
- CommSec was required to provide confirmations to clients in respect of market transactions entered into by the clients which included (inter alia) the following:
- (c) information set out in s 1017F of the Corporations Act, including information that CommSec reasonably believes the client needs (having regard to information the client received before the transaction) to understand the nature of the transaction (s 1017F(5));
 - (d) the amount of money that the client must pay, or which the client will receive, on settlement of the transaction; and
 - (e) where the transaction involves a 'crossing', a statement to that effect.

325. CommSec admits that, where it failed to send trade confirmations in respect of market transactions, by reason of:

- (a) the Equities Trade Confirmations Issue; and
- (b) the Rebooked Trade Confirmations Issue,

CommSec contravened rule 3.4.1(1) of the ASX Rules and the Securities Markets Rules on:

- (c) 1,109 occasions between 1 March 2015 and 12 March 2019; and
- (d) 97 occasions between 13 March 2019 and 6 November 2019.

326. In relation to the content of ETO trade confirmations, CommSec admits that it contravened s 798H of the Corporations Act by reason of contravention of rule 3.4.1(3)(a) of the ASX Rules and the Securities Markets Rules, where confirmations issued by CommSec in respect of market transactions were affected by one or more of the following issues:

- (a) the Strike Price Issue – the strike price being information that CommSec reasonably believed the client needed to understand the nature of the transaction to which the confirmation related;
- (b) the Contract Size Issue – the contract size being information that CommSec reasonably believed the client needed to understand the nature of the transaction to which the confirmation related;

- (c) the Rebookings Issue – the incorrect total value amount being information that CommSec reasonably believed the client needed to understand the nature of the transaction to which the confirmation related.

327. This occurred on:

- (a) 176,796 occasions between 1 March 2015 and 12 March 2019; and
- (b) 11,095 occasions between 13 March 2019 and 15 June 2019.

328. In relation to the content of equities trade confirmations, CommSec admits that it contravened s 798H of the Corporations Act by reason of contravention of rule 3.4.1(3)(f) of the ASX Rules and the Securities Markets Rules for confirmations affected by the Equities Crossing Disclosure Issue, in that the relevant transactions involved a crossing, but the confirmations did not include a statement to that effect. This occurred on:

- (a) 16,624 occasions between 1 March 2015 and 12 March 2019; and
- (b) 683 occasions between 13 March 2019 and 30 September 2019.

329. In respect of:

- (a) the Traded Value Issue;
- (b) the OPIC Issue;
- (c) the Partially Assigned/Exercised Issue;
- (d) the Partially Expired Issue; and
- (e) the GST Issue,

the confirmations in question were not provided in respect of 'market transactions' for the purposes of rule 3.4.1 of the ASX Rules and Securities Markets Rules, and do not give rise to contraventions of that provision. Those facts have been included in this SOAFAC are part of the Trade Confirmations Issues that contribute (cumulatively with other matters) toward CommSec's contravention of s 912A(1)(a) of the Corporations Act as further detailed in Section L below.

- (b) Contravention of rule 4.2.1
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330. At all material times:

- (a) between 1 March 2015 and 6 May 2018, pursuant to rule 4.2.1(1)(h) of the ASX Rules; and
- (b) from 7 May 2018 on, pursuant to rule 4.2.1(1)(h) of the Securities Markets Rules,

CommSec was required to maintain accurate records in sufficient detail to show particulars of all confirmations issued by it and details of any statements and specifications required by the above referenced rules, the operating rules of the relevant market and the Corporations Act.

331. In relation to the Rebookings Issue, CommSec did not maintain accurate records in sufficient detail to show particulars of the incorrect brokerage and ASX clear fees used to derive the total value following the rebooked trade shown in confirmations affected by the Rebookings Issue between 1 March 2015 and 1 December 2018. As CommSec implemented a system fix to rectify the Rebookings Issue for historical and future confirmations, only the *correct* total value which should have appeared on confirmations historically issued to customers can be obtained by generating a historical confirmation from CSC.
332. CommSec admits that, by failing to maintain records of the particulars described above of confirmations issued to customers, CommSec contravened s 798H of the Corporations Act by reason of a contravention of rule 4.2.1(1)(h) of the ASX Rules and the Securities Markets Rules.

(c) Contravention of rule 2.1.3

333. At all material times:

- (a) between 1 March 2015 and 6 May 2018, pursuant to rule 2.1.3 of the ASX Rules; and
 - (b) from 7 May 2018 on, pursuant to rule 2.1.3 of the Securities Markets Rules,
- CommSec was required to have appropriate supervisory policies and procedures to ensure compliance with the Market Integrity Rules, the operating rules of the relevant market and the Corporations Act.

334. CommSec admits that, by reason of the fact that:

- (a) the Equities Trade Confirmations Issue persisted from April 2012 to 6 November 2019;
- (b) the Rebooked Trade Confirmations Issue persisted from 1 April 2012 to 23 October 2019;
- (c) the Strike Price Issue persisted from 8 August 2014 to 15 June 2019;
- (d) the Contract Size Issue persisted from 31 December 2014 to 15 June 2019;
- (e) the Rebookings Issue persisted from 27 August 2014 to 1 December 2018;

- (f) the Equities Crossing Disclosure Issue persisted from 24 April 2017 to 29 April 2019,

CommSec failed to have in place appropriate supervisory procedures to ensure compliance with the Market Integrity Rules from 1 March 2015 to the commencement of Project Umbrella in October 2018 (in particular by reference to rules 3.4.1 and 4.2.1 as detailed in Section G(III) at items (a) and (b) above).

335. In the premises of paragraphs [325], [326], [328], [331] and [334], CommSec contravened s 798H of the Corporations Act by reason of a contravention of rule 2.1.3.

IV. AUSIEX Trade Confirmations Issues

336. AUSIEX trade confirmations were affected by the following issues:

(a) ETOs:

(i) There was one issue affecting the accuracy of ETO trade confirmations which gave rise to contraventions of rule 3.4.1(3) – namely, the Contract Size Issue. There were two issues resulting in a failure to send ETO trade confirmations in contravention of rule 3.4.1(1).

(ii) There were nine other issues which affected the accuracy of confirmations relating to ETOs but were not in respect of market transactions in ETOs and therefore did not give rise to any contravention of the ASX Rules or the Securities Markets Rules.

(b) Equities: There was one issue affecting the accuracy of equities trade confirmations in contravention of rule 3.4.1(3) and one issue resulting in failure to send equities trade confirmations in contravention of rule 3.4.1(1).

(c) By reason of the conduct contravening rules 3.4.1(1), 3.4.1(3) and 4.2.1(1), CommSec failed to have appropriate supervisory procedures to ensure compliance with those rules, in contravention of rule 2.1.3.

337. There were some ETO confirmations which were affected by one or more of the ten accuracy issues (including confirmations not in respect of market transactions). In total, the number of confirmations affected by one or more of the ten issues was 47,718 confirmations between 1 March 2015 and 7 September 2019, although many of these confirmations are not in respect of market transactions.

(a) Contract Size Issue

338. Between 9 November 2015 and 15 June 2019, the contract size for XJO index options provided on trade confirmations issued by AUSIEX was incorrect. The trade confirmations described the contract size as "10 Shares per lot", where it should have been described as "\$10 per point" (the **Contract Size Issue**). The first known occurrence was in a trade confirmation issued by AUSIEX dated 9 November 2015.
339. The Contract Size Issue was identified in March 2018. AUSIEX identified that the issue had been caused by AUSIEX incorrectly specifying to the third party vendor that the contract size in the Trading System Data (which is then used by AUSIEX to populate trade confirmations) should be described as "10 shares per lot" rather than "\$10 per point".
340. AUSIEX reported the Contract Size Issue to ASIC on 21 September 2018. AUSIEX rectified the issue on 15 June 2019 by implementing a system fix which corrected the XJO index option contract size to "\$10 per point".
341. A total of 18,367 trade confirmations were affected by the Contract Size Issue between 9 November 2015 and 15 June 2019 (which includes confirmations affected by other ETO confirmation issues). Of those, there were:
- (a) 16,488 trade confirmations between 9 November 2015 and 12 March 2019;
 - (b) 1,879 trade confirmations between 13 March 2019 and 15 June 2019.
342. The Contract Size Issue affected confirmations issued to customers in respect of market transactions in ETOs, being the transaction to open or close the option position.
343. During the period between 9 November 2015 and June 2019 the correct contract size for XJO index options was contained in the AUSIEX ETO Product Disclosure Statement which the customer is required to acknowledge they have read as part of the account origination process.

(b) Traded Value Issue

344. Between 26 November 2015 and 20 October 2018, confirmations issued by AUSIEX for assigned short option positions showed the "Traded Value" as a debit when it should have been shown as a credit (the **Traded Value Issue**). (This is not the same as the Traded Value Issue for CommSec.)
345. As noted at paragraph [257], the Traded Value is consideration paid or received at the time the position is opened (where it appears on the "trading confirmation" section it is exclusive of fees and where it appears on the "liquidation advice" section it is inclusive

of fees). At the time the position was opened, a confirmation was issued by AUSIEX with the correct Traded Value for the sell transaction (ie a sell transaction to open the short position). At the time the option position was assigned, a confirmation was issued by AUSIEX showing in the "Liquidation Advice – Assignment/Exercise" section, the incorrect Traded Value (ie the value of the position when it was opened). No market transaction occurred upon option assignment.

346. As the Traded Value Issue affected confirmations which were not in respect of market transactions, it is not an issue which gives rise to contravention of rule 3.4.1 of the Market Integrity Rules.
347. The Traded Value Issue was first identified in March 2018.
348. The Traded Value Issue arose because the Trading System Data previously quoted positive Traded Values for buy and sell trades. In this context, AUSIEX applied a logic to multiply sell trades by (-1), with the effect that the Traded Value would show a credit (CR) on the ETO trading confirmations. The Trading System Data subsequently changed to negative Traded Values for sell trades. AUSIEX inadvertently failed to remove the coded logic of multiplying by (-1). This led to the Traded Value showing a debit (DR) on the ETO trading confirmations.
349. AUSIEX reported the Traded Value Issue to ASIC on 21 September 2018.
350. AUSIEX rectified the issue on 20 October 2018 by implementing a system fix so that if the Trading System Data was using negative Traded Values for sell trades, then the AUSIEX system would keep the Traded Value as is. Conversely if the Trading System Data used positive Traded Values for sell trades, then the AUSIEX system would multiply the sell trades by (-1). The effect of this is that all sell transactions appeared as credit entries in AUSIEX's database.
351. A total of 7,524 confirmations were affected by the Traded Value Issue between 26 November 2015 and 20 October 2018 (which includes confirmations affected by other ETO confirmation issues).

(c) Settlement Value Issue

352. Between 19 January 2017 and 23 February 2019, AUSIEX failed to provide a 'settlement value' in confirmations where an amount was due to the client (**Settlement Value Issue**).
353. Upon the assignment or exercise of a XJO (ie S&P ASX 200) index option position, there is a cash settlement. The Settlement Value Issue affected confirmations issued upon cash settlement following an assignment or exercise of a XJO index option. The

cash settlement is not a market transaction, and therefore the issue does not give rise to a contravention of rule 3.4.1.

354. The Settlement Value Issue was identified in March 2018. AUSIEX identified that the issue arose because the coded logic used by AUSIEX to obtain XJO 'Settlement Value (\$)' from the Trading System Data was incorrect, as it referenced the trade date (ie the date when the position was entered into), when it should have referenced the liquidation date (ie the date when the position was assigned or exercised).
355. AUSIEX reported the Settlement Value Issue to ASIC on 21 September 2018. AUSIEX rectified the issue by implementing a system fix on 23 February 2019 which corrected the logic.
356. The Settlement Value Issue affected 350 confirmations between 19 January 2017 and 23 February 2019 (which includes confirmations affected by other ETO confirmation issues).

(d) Intermediary's Clients Confirmations Issue

357. Between 21 May 2012 and August 2018, AUSIEX failed to send 139 client accounts of one of its intermediaries (the **Intermediary**) a total of 1,732 ETO confirmations. Of those, 844 confirmations were not sent on or after 1 March 2015 (the **Intermediary's Clients Confirmations Issue**).
358. In AUSIEX's CSC system, an options account cannot be opened without a linked equities account. In the case of the Intermediary's clients, AUSIEX only provides execution and clearing services in relation to options (the Intermediary itself provides execution services in relation to cash equities trading). As such, there were no equities account to which the Intermediary's clients options accounts could be linked.
359. Before an options account in CSC could be opened for a client of the Intermediary, a linked 'shell' equities account was established in CSC. As the CSC system required an email address to be provided for shell equities accounts to be set up, AUSIEX internal email addresses were used for these shell equities accounts.
360. AUSIEX identified the Intermediary's Clients Confirmations Issue on 20 July 2018. The issue arose because during the manual account opening process, AUSIEX internal email addresses were mistakenly recorded when setting up the options accounts for those clients. This resulted in trade confirmations being delivered to the AUSIEX internal email addresses, rather than to the Intermediary's clients. AUSIEX's records show that copies of the trade confirmations were also sent to the relevant clients' advisers at the Intermediary.

361. The issue was reported to ASIC on 24 October 2018. AUSIEX implemented the following remedial action on 28 August 2018:

- (a) The account origination procedures were updated to require that trade confirmations and monthly statements be sent by post where a client does not provide an email address on the application form; and
- (b) The 139 client accounts of the Intermediary were updated to reflect the postal confirmation/statement delivery requirement described above.

362. The number of trade confirmations not sent due to this issue as a proportion of the total number of domestic ETO confirmations issued by AUSIEX is set out below:

2012	2013	2014	2015	2016	2017	2018	2019
0.789%	5.043%	0.484%	1.430%	1.450%	1.533%	0.637%	0.000%

(e) GST Issue

363. Between 26 November 2015 and 7 September 2019, for confirmations issued to clients by AUSIEX where there had been an assignment or exercise transaction, the "Total GST for this invoice" value was incorrectly stated (**GST Issue**).

364. As the GST Issue affected confirmations for the assignment or exercise of an option which are not confirmations in respect of a market transaction, this issue does not give rise to a contravention of rule 3.4.1.

365. Notwithstanding the error on the face of the confirmations, customers were charged the correct GST amounts.

366. The issue was identified on or around 1 March 2019 during testing conducted as part of Project Umbrella. The issue arose because the coded logic used to generate the confirmations was incorrect as it showed the ASX Clear Fee as a credit (CR) sign. This resulted in the GST also showing as a credit (CR) sign, and the total GST invoice amount being incorrectly stated.

367. AUSIEX reported the GST Issue to ASIC on 28 March 2019. AUSIEX implemented a permanent system fix on 7 September 2019.

368. A total of 11,751 confirmations were affected by the GST Issue (which includes confirmations affected by other ETO confirmation issues), with:

- (a) 9,282 confirmations between 26 November 2015 and 12 March 2019;
- (b) 2,469 confirmations between 13 March 2019 and 7 September 2019.

(f) ASX Clear Fee Issue

369. Between 26 November 2015 and 7 September 2019, for confirmations issued to clients by AUSIEX where there had been an assignment or exercise of an option, the ASX Clear Fee was incorrectly stated as a credit (CR sign) instead of a debit (DR sign) under the 'Liquidation Advice' Assignment/Exercise section (**ASX Clear Fee Issue**).
370. As the ASX Clear Fee Issue affected confirmations for the assignment or exercise of an option which are not confirmations in respect of a market transaction, this issue does not give rise to a contravention of rule 3.4.1.
371. Notwithstanding the error on the face of the confirmations, customers were charged the correct amounts.
372. The ASX Clear Fee Issue was identified on 12 March 2019 during testing conducted as part of Project Umbrella. The issue arose because the coded logic incorrectly showed a credit (CR) sign rather than a debit (DR) sign for ASX Clear fees on assignment or exercise.
373. AUSIEX reported the ASX Clear Fee Issue to ASIC on 28 March 2019. AUSIEX rectified the issue on 7 September 2019 by implementation of a system fix.
374. A total of 11,751 confirmations were affected by the ASX Clear Fee Issue (which includes confirmations affected by other ETO confirmation issues), with:
- (a) 9,282 confirmations between 26 November 2015 and 12 March 2019;
 - (b) 2,469 confirmations between 13 March 2019 and 7 September 2019.

(g) Equities Crossing Disclosure Issue

375. At all material times, where a market transaction involved a crossing (ie where AUSIEX acts on behalf of both buying and selling clients to that transaction), AUSIEX was obliged to include a statement to that effect in the trade confirmation issued to the client (rule 3.4.1(3)(f) of the ASX Market Rules and Securities Market Rules).
376. Between 24 April 2017 and 7 May 2019, equities trade confirmations issued by AUSIEX to clients did not contain a crossing disclosure in circumstances where AUSIEX had acted on behalf of both the buying and selling clients to that transaction (the **Equities Crossing Disclosure Issue**). AUSIEX did not act as principal on any of those transactions.
377. The matter was caused by the interaction of the CoreTX system and the Trading System used by AUSIEX, following a system release in the Trading System on 24 April 2017 which caused the Trading System to take longer populating the contract note

table within the database with the effect that the CoreTX process that generated the trade confirmations intermittently commenced before the Trading System had completed populating the contract note table.

378. The issue was identified on 30 March 2019 during monthly control assurance testing of the content of equities trade confirmations. AUSIEX rectified the issue by implementing a code change on 7 May 2019.
379. AUSIEX reported the Equities Crossing Disclosure Issue to ASIC on 16 May 2019, providing an update on 11 June 2019.
380. On 19 July 2019, AUSIEX electronic notifications were sent to affected customers and their advisers (where appropriate).
381. A total of 297 equities trade confirmations sent to 278 AUSIEX client accounts were affected by the Equities Crossing Disclosure Issue, with:
 - (a) 287 trade confirmations between 24 April 2017 and 12 March 2019;
 - (b) 10 trade confirmations between 13 March 2019 and 7 May 2019.

(h) Equities Trade Confirmations Issue

382. AUSIEX failed to issue trade confirmations in relation to trades in cash market products (ie equities) to customers (the **Equities Trade Confirmations Issue**). Between September 2012 and 27 November 2019, AUSIEX failed to send 2,428 equities trade confirmations to customers. Of these:
 - (a) 1,412 were in relation to trade confirmations that should have been sent between 1 March 2015 and 12 March 2019;
 - (b) 700 were in relation to trade confirmations that should have been sent between 13 March 2019 and 27 November 2019.
383. Following the execution of an equities trade, CoreTX imports data in relation to the transaction from the Trading System, and generates an email with the electronic trade confirmation to be sent to the customer. The email (along with the electronic trade confirmation) is then sent to Ironport, which is a server used to send the email (along with the electronic trade confirmation) to the customer.
384. Prior to October 2019, AUSIEX had in place the following controls with respect to monitoring the sending of electronic trade confirmations for equities transactions:
 - (a) Contract Notes Not Sent Report since 2015: This report identified instances where an electronic trade confirmation was not sent from AUSIEX to a customer

account. This report was monitored on a daily basis by the Market Operations team to ensure that trade confirmations were manually sent to customers.

- (b) CNote reconciliation alert since 2013: This alert identified on a daily basis the total number of instances where an electronic trade confirmation had potentially not been imported to CoreTX from the Trading System.
- (c) Ironport alert since 2017: Ironport, the server that sends outbound emails from AUSIEX, produced an alert to IT on an exceptions basis where emails containing electronic trade confirmations were not sent out from AUSIEX. This was done on an aggregated numerical basis – that is, the Ironport alert would set out the total number of electronic trade confirmations that had not been sent out for the previous trading day, but it did not identify the details of the actual electronic trade confirmations which had not been sent out. The alert prompted the IT team to investigate the details of why the electronic trade confirmation failed to send.

385. In around June 2019, AUSIEX considered that the existing electronic trade confirmation monitoring and exception process should replicate the CommSec process.

386. On or around 26 October 2019, AUSIEX began to use a new AUSIEX reconciliation report which identifies failures to send electronic trade confirmations to account holders (**Reconciliation Report**). The Reconciliation Report shows:

- (a) trade confirmations which potentially were not imported to CoreTX from the Trading System;
- (b) trade confirmations which AUSIEX potentially had not attempted to send electronically to the customer;
- (c) trade confirmations for which AUSIEX received a bounce-back message from the customer's email address; and
- (d) trade confirmation reversals which occur when a trade has been reversed and confirmation of the reversal is required to be sent to the customer.

387. In the course of implementing the new AUSIEX Reconciliation Report, AUSIEX conducted testing of the new Reconciliation Report against the Contract Notes Not Sent Report.

388. On 8 November 2019, the testing identified that the existing control reports did not identify instances where an electronic trade confirmation was only sent to a third party nominated by the account holder, and not sent to the account holder. Such instances

arose in circumstances where certain fields in the client's profile in CoreTX was incomplete, such as in the following circumstances:

- (a) there was no preferred contact selected on account level;
- (b) there was no preferred email address recorded at either the client level or account level for some clients who elected to receive trade confirmations electronically; or
- (c) there was no email address recorded in the Contract Note Subscription field for clients who had subscribed to receive electronic contract notes.

389. However, whilst the account holder did not receive the trade confirmation, a third party nominated by the customer did receive the trade confirmation.

390. On an ongoing basis since 2 November 2019, the CommSec Technical Support team has been monitoring the AUSIEX Reconciliation Report for failures to send electronic trade confirmations to customers by email, and

- (a) where the CommSec Technical Support Team and Equities Associates are able to obtain the relevant email address from the account owner, they update the client's data profile with the correct email address and manually email the electronic trade confirmation to the account holder; or
- (b) where the CommSec Technical Support Team and Equities Associates are not able to obtain the relevant email address from the client, they switch the client to receive trade confirmations via post (rather than electronically) and send the client the trade confirmation via post the following morning.

391. AUSIEX reported the Equities Trade Confirmations Issue to ASIC on 14 February 2020.

392. The number of equities trade confirmations not sent for each relevant calendar year from September 2012 onwards and that number as a proportion of the total number of AUSIEX domestic equity trade confirmations issued within each calendar year is set out below:

	2012	2013	2014	2015	2016	2017	2018	2019
Number of Affected Trade Confirmations	54	136	99	137	67	581	509	845
Proportion Affected	0.005 %	0.010 %	0.007 %	0.008 %	0.004 %	0.032 %	0.028 %	0.045 %

(i) OPIC Issue

393. Between 19 January 2017 and 10 August 2019, confirmations issued by AUSIEX for cash settlement following an assignment or exercise of a XJO index option (ie S&P ASX 200) did not display the opening price index calculation for XJO index options (the **OPIC Issue**).
394. Upon the exercise or assignment of a XJO index option position, there is a cash settlement transaction. The settlement price is based on the opening price on the ASX of each stock in the underlying index on the morning of the expiry date. As the stocks in the index open, the first trading price of each stock is recorded. Once all stocks in the index have opened, an index calculation is made using these opening prices. The process is called the Opening Price Index Calculation (**OPIC**). Shortly afterwards, the OPIC is confirmed to ASX and ASX Clear and is announced to the market. The OPIC is posted onto the ASX website.
395. As the OPIC value is published on the expiry day on the ASX website and is not the amount which the customer pays or receives on settlement, AUSIEX was not required to disclose the OPIC value in confirmations.
396. The OPIC Issue affected confirmations issued to confirm the cash settlement transaction resulting from an assignment or exercise of an XJO index option. The cash settlement is not a market transaction, and therefore the issue does not give rise to a contravention of rule 3.4.1.
397. The OPIC Issue was identified in March 2018. AUSIEX identified that the issue arose because the OPIC value for XJO transactions was not addressed in AUSIEX's functional specifications for trading confirmations.
398. AUSIEX reported the OPIC Issue to ASIC on 21 September 2018. AUSIEX rectified the issue on 10 August 2019 by adding the following explanatory wording to confirmations: *"For cash settlement of XJO Index Options, the ASX Opening Price Index Calculation (OPIC) value is available from the ASX website."*
399. A total of 508 confirmations were affected by the OPIC Issue (which includes confirmations affected by other ETO confirmation issues), with:
- (a) 365 confirmations between 19 January 2017 and 12 March 2019;
 - (b) 143 confirmations between 13 March 2019 and 10 August 2019.

(j) Expiry Date Issue

400. Between 26 November 2015 and 23 February 2019, a total of 37,503 confirmations issued by AUSIEX to clients had the expiry date incorrectly populated with the trade date under the 'Liquidation Advice Expired, Assignment Exercise and Matchout sections (**Expiry Date Issue**). (The number of affected confirmations include confirmations affected by other ETO confirmation issues.)
401. At the time the position was opened, a trade confirmation was issued by AUSIEX with the correct expiry date. At the time of liquidation (ie expiry or assignment or exercise of an option position, or a "close out" of a position (also known as a "match out")), a further confirmation was issued showing in the "Liquidation Advice" section, the incorrect expiry date of the option position. No market transaction occurred upon expiry or assignment or exercise of an option position. In the case of a "close out" (or "match out"), the correct expiry date was shown in the "trading confirmation" section and the incorrect expiry date only appeared in the "liquidation advice" section of the confirmation.
402. In the case of expiry, assignment or exercise of an option position, confirmations issued in those liquidation scenarios were not confirmations in respect of market transactions. In the case of a "close out" (or "match out"), the correct expiry date was recorded in the trading confirmation section. Accordingly, the Expiry Date Issue is not an issue which gives rise to contravention of rule 3.4.1 of the Market Integrity Rules.
403. The Expiry Date Issue was identified around 22 October 2018 as part of changes made under Project Umbrella. The issue arose because the coded logic used to populate the Expiry Date was incorrectly referencing the trade date.
404. AUSIEX reported the Expiry Date Issue to ASIC on 2 November 2018. AUSIEX rectified the issue on 23 February 2019 by implementation of a system fix which corrected the logic such that the expiry date under the "Liquidation Advice" section.

(k) Partially Assigned/Exercised Issue

405. Between 21 December 2017 and 15 June 2019, confirmations issued by AUSIEX to clients recording the partial assignment of an exercise of an option position had the incorrect "Traded Value" under the "Liquidation Advice" Assignment/Exercise section in the confirmation for positions that were partially assigned or exercised (the **Partially Assigned/Exercised Issue**).
406. At the time the position was opened, the trade confirmation issued by AUSIEX contained the correct Traded Value. At the time of partial assignment or exercise, the

confirmation issued by AUSIEX showed an incorrect Traded Value as the value was not proportionate to the number of contracts assigned or exercised. (As noted above, the "Traded Value" is the value of the position when it was opened.) The confirmation issued upon partial assignment or exercise is not a confirmation in respect of a market transaction, and therefore the issue does not give rise to a contravention of rule 3.4.1.

407. The issue was identified on 1 November 2018 as part of the Project Umbrella review and testing of customer statements.
408. The issue arose because AUSIEX mistakenly specified to the third party vendor that the Trading System Data should calculate the Traded Value to be stated on the confirmation issued on partial assignment or exercise, based on the total number of open contracts, in circumstances in which the data table should have calculated the Traded Value based on the number of assigned or exercised contracts.
409. AUSIEX reported the Partially Assigned/Exercised Issue to ASIC on 30 November 2018. The issue was rectified on 15 June 2019 by AUSIEX requesting that the third party vendor make changes to the Trading System Data.
410. A total of 2,757 confirmations were affected by the Partially Assigned/Exercised Issue (which includes confirmations affected by other ETO confirmation issues), with:
- (a) 2,083 confirmations between 21 December 2017 and 12 March 2019;
 - (b) 674 confirmations between 13 March 2019 and 15 June 2019.

(l) Partially Expired Issue

411. Between 25 October 2018 and 15 June 2019, confirmations issued to clients by AUSIEX had the incorrect "Traded Value" under the "Liquidation Advice" Expired section in the confirmation issued for positions that were partially expired (the **Partially Expired Issue**). As noted at paragraph [282] above, positions partially expire in circumstances where a client holds a number of options positions, liquidates some but not all of those positions and the balance of the positions expire.
412. At the time the position was opened, a trade confirmation was issued with the correct Traded Value. At the time of partial expiry of the option position, a confirmation was issued showing the incorrect Traded Value as the value was not proportionate to the number of contracts expired. The confirmation issued upon partial expiry is not a confirmation in respect of a market transaction, and therefore this issue does not give rise to a contravention of rule 3.4.1.

413. The issue was identified on 1 November 2018 during testing conducted as part of Project Umbrella. AUSIEX identified that the issue arose because AUSIEX mistakenly specified with the third party vendor that the Trading System Data should calculate the Traded Value based on the total number of open contracts, in circumstances in which the data table should calculate the Traded Value based on the number of partially expired contracts.
414. AUSIEX reported the Partially Expired Issue to ASIC on 30 November 2018. The issue was rectified on 15 June 2019 by AUSIEX requesting that the third party vendor make changes to the Trading System Data.
415. A total of 145 confirmations were affected by the Partially Expired Issue (which includes confirmations affected by other ETO confirmation issues), with:
- (a) 72 confirmations between 25 October 2018 and 12 March 2019;
 - (b) 73 confirmations between 13 March 2019 and 15 June 2019.
- (m) Buy Trades Issue
-

416. Between 25 October 2018 and 15 June 2019, confirmations issued by AUSIEX for exercised long option positions incorrectly showed the "Traded Value" as (CR) instead of (DR) under the "Liquidation Advice" Assignment/Exercised section (the **Buy Trades Issue**).
417. At the time the position was opened, a trade confirmation was issued with the correct Traded Value for the buy transaction. At the time of exercise of the option, a confirmation was issued showing in the "Assignment/Exercise" section, the incorrect Traded Value when the position was opened by the sell transaction.
418. As the Buy Trades Issue affected confirmations which were not in respect of market transactions, it is not an issue which gives rise to contravention of rule 3.4.1 of the Market Integrity Rules.
419. The issue was identified on 1 November 2018 as part of the Project Umbrella review and testing of customer statements. The issue arose because the coded logic incorrectly showed a credit (CR) sign for buy trades under 'Traded Value' under the 'Liquidation Advice' Assignment/Exercise section.
420. AUSIEX reported the Buy Trades Issue to ASIC on 30 November 2018. AUSIEX rectified the issue on 15 June 2019 by implementation of a system fix so that the "Traded Value" for buy trades exercised was corrected to show a debit (DR) sign.

421. A total of 15 confirmations were affected by the Buy Trades Issue (which may include confirmations affected by other ETO confirmation issues), with:

- (a) 11 confirmations between 25 October 2018 and 12 March 2019;
- (b) 4 confirmations between 13 March 2019 and 15 June 2019.

(n) Rebooked Trades Confirmations Issue

422. Between 1 September 2012 and 23 October 2019, AUSIEX failed to send ETO confirmations to customers where the trade was rebooked on T+1 (the **Rebooked Trades Confirmations Issue**).

423. When an ETO trade occurs (T-0), a trade confirmation is generated and sent to the customer on the next business day (T+1). On occasion, trades which have been originally booked on T-0 need to be amended on T+1 ("rebooking").

424. AUSIEX did not re-issue trading confirmations to the customers although a change in booking occurred.

425. A confirmation in respect of a rebooked trade occurring on T+1 is a confirmation in respect of a market transaction, except where the trade in the ETO was rebooked at the request of the client or the client's adviser (for example, where a client or its adviser requests that CommSec rebook the trade to different account of the client).

426. The Rebooked Trades Confirmation Issue involved failure to send 735 ETO trade confirmations between 1 September 2012 and 23 October 2019. Of these:

- (a) 387 were in relation to trade confirmations that should have been sent between 1 March 2015 and 12 March 2019; and
- (b) 81 were in relation to trade confirmations that should have been sent between 13 March 2019 and 23 October 2019.

427. The Rebooked Trades Confirmations Issue was first identified on 11 October 2018.

428. The Rebooked Trades Confirmations Issue was rectified on 23 October 2019 with a manual process, and an automated process was implemented on 17 October 2020.

429. AUSIEX reported the Rebooked Trades Confirmation Issue to ASIC on 14 August 2020.

(o) Summary of AUSIEX Trade Confirmation Issues

430. A summary of the issues in respect of the AUSIEX Trade Confirmations Issues is set out in the table below, including whether the issue relates to ETOs or equities, whether the issue relates to inaccuracy in content of confirmations or failure to issue

confirmations, whether or not the confirmations affected by each issue relate to a market transaction, and the relevant provision of the Market Integrity Rules which AUSIEX admits has been contravened.

Issue	Name of the issue	Product	Nature of the issue	Whether affected confirmations relate to a market transaction?	Admitted contravention of Market Integrity Rules
A	Contract Size Issue	ETO	Inaccuracy	Yes	Rule 3.4.1(3) Rule 2.1.3
B	Traded Value Issue	ETO	Inaccuracy	No	
C	Settlement Value Issue	ETO	Inaccuracy	No	
D	Intermediary's Clients Confirmations Issue	ETO	Failure to issue	Yes	Rule 3.4.1(1) Rule 2.1.3
E	GST Issue	ETO	Inaccuracy	No	
F	ASX Clear Fee Issue	ETO	Inaccuracy	No	
G	Equities Crossing Disclosure Issue	Equities	Inaccuracy	Yes	Rule 3.4.1(3) Rule 2.1.3
H	Equities Trade Confirmations Issue	Equities	Failure to issue	Yes	Rule 3.4.1(1) Rule 2.1.3
I	OPIC Issue	ETO	Inaccuracy	No	
J	Expiry Date Issue	ETO	Inaccuracy	No	Rule 4.2.1(1)(h)
K	Partially Assigned/Exercised Issue	ETO	Inaccuracy	No	

L	Partially Expired Issue	ETO	Inaccuracy	No	
M	Buy Trades Issue	ETO	Inaccuracy	No	
N	Rebooked Trades Confirmations Issue	ETO	Failure to issue	Yes, where the trade was not rebooked at the request of the client	Rule 3.4.1(1) Rule 2.1.3

V. AUSIEX admitted contraventions of s 798H of the Corporations Act

(a) Contraventions of rule 3.4.1

431. At all material times:

- (a) between 1 March 2015 and 6 May 2018, pursuant to rule 3.4.1 of the ASX Rules; and
- (b) from 7 May 2018 on, pursuant to rule 3.4.1 of the Securities Markets Rules, AUSIEX was required to provide confirmations to clients in respect of market transactions entered into by the clients which included (inter alia) the following:
 - (c) information set out in s 1017F of the Corporations Act (including information that AUSIEX reasonably believes the client needs, having regard to the information the holder has received before the transaction, to understand the nature of the transaction (s 1017F(5)); and
 - (d) where the transaction involves a 'crossing', a statement to that effect.

432. AUSIEX admits that, where it failed to send trade confirmations in respect of market transactions, by reason of:

- (a) the Intermediary's Clients Confirmations Issue;
- (b) the Equities Trade Confirmations Issue; and
- (c) the Rebooked Trades Confirmation Issue,

AUSIEX contravened s 798H of the Corporations Act, by reason of contravention of rule 3.4.1(1) of the ASX Rules and the Securities Markets Rules on:

- (d) 2,643 occasions between 1 March 2015 and 12 March 2019; and

(e) 781 occasions between 13 March 2019 and 27 November 2019.

433. In relation to the content of ETO trade confirmations, AUSIEX admits that it contravened s798H of the Corporations Act by reason of contravention of rule 3.4.1(3)(a) of the ASX Rules and the Securities Markets Rules, where confirmations issued by AUSIEX in respect of market transactions were affected by the Contract Size Issue (the contract size being information that AUSIEX reasonably believed the client needed in order to understand the nature of the transaction to which the confirmation related on:

(a) 16,488 occasions between 9 November 2015 and 12 March 2019; and

(b) 1,879 occasions between 13 March 2019 and 15 June 2019.

434. In relation to the content of equities trade confirmations, AUSIEX admits that it contravened s 798H of the Corporations Act by reason of contravention of rule 3.4.1(3)(f) of the ASX Rules and the Securities Markets Rules for confirmations affected by the Equities Crossing Disclosure Issue, in that the relevant transactions involved a crossing, but the confirmations did not include a statement to that effect. This occurred on:

(a) 287 occasions between 24 April 2017 and 12 March 2019; and

(b) 10 occasions between 13 March 2019 and 30 September 2019.

435. In respect of:

(a) the Traded Value Issue;

(b) the Settlement Value Issue;

(c) the GST Issue;

(d) the ASX Clear Fee Issue;

(e) the OPIC Issue;

(f) the Expiry Date Issue;

(g) the Partially Assigned/Exercised Issue; and

(h) the Partially Expired Issue; and

(i) the Buy Trades Issue,

as noted at paragraphs [336](a)(ii) and [430] above, the confirmations in question were not provided in respect of 'market transactions' for the purposes of rule 3.4.1 of the ASX Rules and Securities Markets Rules, and do not give rise to a contravention of that provision. Those facts have been included in this SOAFAC are part of the Trade

Confirmations Issues that contribute (cumulatively with other matters) toward AUSIEX's contravention of s 912A(1)(a) of the Corporations Act as further detailed in Section L below.

(b) Contravention of rule 4.2.1

436. At all material times:

- (a) between 1 March 2015 and 6 May 2018, pursuant to rule 4.2.1(1)(h) of the ASX Rules; and
- (b) from 7 May 2018, pursuant to rule 4.2.1(1)(h) of the Securities Markets Rules, AUSIEX was required to maintain accurate records in sufficient detail to show particulars of all confirmations issued by it and details of any statements and specifications required by the Market Integrity Rules, the operating rules of the relevant market and the Corporations Act.

437. In relation to the Expiry Date Issue, AUSIEX did not maintain accurate records in sufficient detail to show particulars of the incorrect expiry date shown in the "Liquidation Advice" section of the confirmation between 1 March 2015 and 23 February 2019. The records not retained by AUSIEX are the particulars of the *incorrect* expiry date shown on confirmations issued to customers. As noted above, the *correct* expiry date appeared on trade confirmations issued by AUSIEX at the time the option position was opened.

438. AUSIEX admits that, by failing to maintain such records as described in the preceding paragraph, AUSIEX contravened s798H of the Corporations Act by reason of a contravention of rule 4.2.1(1)(h) of the ASX Rules and the Securities Markets Rules.

(c) Contravention of rule 2.1.3

439. At all material times:

- (a) between 1 March 2015 and 6 May 2018, pursuant to rule 2.1.3 of the ASX Rules; and
- (b) from 7 May 2018 on, pursuant to rule 2.1.3 of the Securities Markets Rules, AUSIEX was required to have appropriate supervisory policies and procedures to ensure compliance with the Market Integrity Rules, the operating rules of the relevant market and the Corporations Act.

440. AUSIEX admits that, by reason of the fact that:

- (a) the Intermediary's Clients Confirmations Issue persisted from 21 May 2012 to August 2018;
- (b) the Equities Trade Confirmations Issue persisted from 3 September 2012 to 27 November 2019;
- (c) the Rebooked Trade Confirmations Issue persisted from 1 September 2012 to 23 October 2019;
- (d) the Contract Size Issue persisted from 9 November 2015 to 15 June 2019;
- (e) the Equities Crossing Disclosure Issue persisted from 24 April 2017 to 7 May 2019,

AUSIEX failed to have in place appropriate supervisory procedures to ensure compliance with the Market Integrity Rules between 1 March 2015 and the commencement of Project Umbrella in October 2018 (in particular by reference to rules 3.4.1 and 4.2.1 as detailed in Section G(V) at items (a) and (b) above).

441. In the premises of paragraphs [432], [433], [434], [437] and [440] above, AUSIEX contravened s 798H of the Corporations Act by reason of a contravention of rule 2.1.3.

VI. Project Umbrella

442. In October 2018, CommSec and AUSIEX instigated Project Umbrella to consolidate the various streams of work in respect of ETO trade confirmations and organised resources around five key streams of work:

- (a) rectifying and remediating known regulatory breaches;
- (b) performing reviews to ensure all issues have been identified;
- (c) tactically remediating risks prior to risk system replacement;
- (d) supporting IT and ASX deliverables; and
- (e) supporting strategic projects to replace the risk system.

443. In addition to system fixes, CommSec and AUSIEX (largely via Project Umbrella) have undertaken and are continuing to undertake remediation steps and implementing changes to compliance arrangements, including:

- (a) engaging with customers affected by the Trade Confirmations Issues;
- (b) conducting an Options Deep Dive, which involved amongst other things:
 - (i) mapping all the options disclosure obligations relating to the Corporations Act, Market Integrity Rules and ASX Clear Operating and ASX

Settlement Rules, to identify any vulnerabilities in CommSec and AUSIEX's controls, processes or systems dependencies;

- (ii) a review of disclosure obligations at account origination or prior to the first trade, such as the provision of the Financial Services Guide, Product Disclosure Statement, ASX Understanding Options booklet;
 - (iii) review of trade confirmations for compliance with transaction-related disclosure obligations and notifying ASIC of additional issues identified, as set out in the above sections;
 - (iv) performing further testing of customer statements with different ETO trade combinations, position liquidations and stock and/or cash collateral, with a view to analysing the complete range of ETO trade permutations (there being 224 unique scenarios); and
- (c) the CommSec Options Desk had been given additional training on complaints handling in order that queries are logged as complaints where appropriate so they may be tracked and escalated as necessary.

444. By the end of November 2019, CommSec implemented an automated transaction sampling report covering the 224 ETO scenarios to enhance Assurance Program (CAP) testing of ETO trade confirmations to require more in-depth consideration of the underlying transactions to ensure these are accurately reflected in the confirmations. AUSIEX implemented an automated transaction sampling report by June 2020. In February 2020, CommSec commenced monthly CAP testing of ETO Trade Confirmations (CT-185263) using the automated transaction sampling report. Monthly test results for CommSec and AUSIEX from February to April 2020 were attributed a pass rating

H. AOP ISSUE

I. Background

445. From 1 August 2010 to 1 November 2018, CommSec allowed orders submitted via one of its Automated Order Processing (AOP) systems, being a particular IRESS order system (IOS) where orders originated from ASB Securities Limited (ASB), to enter the market without being appropriately vetted for no change in beneficial ownership (NCBO) (referred to as the AOP Issue). (IRESS is a market data platform, order management and order execution management system utilised by CommSec for ASX-listed securities, including Australian shares, warrants, ETFs and ETOs. ASB is wholly owned by ASB Bank Limited, which is a subsidiary of CBA.)

446. Of the orders identified above, 49 resulted in NCBO transactions being executed on market, with 23 of those occurring on or after 1 March 2015. This represented less than 0.001% of the total number of domestic equity trades by CommSec in each calendar year from 2010 to 2018.
447. During that period, CommSec had in place NCBO filters for each AOP system to detect possible NCBO transactions amongst the orders flowing through that particular AOP at the time of order placement. Orders from ASB customers were submitted via one of CommSec's AOP systems, namely, IOS CS. The AOP Issue concerns the NCBO filter for IOS CS only.
448. The AOP Issue occurred because one of the filters to detect transactions which would result in no change of beneficial ownership was not appropriate. The AOP Issue arose at two distinct levels:
- (a) First, there was a parameter issue. The NCBO pre-trade filter for IOS CS through which ASB orders were routed was designed to check whether the buy order and corresponding sell order were being performed with the same broker number (or Participant Identification Number (PID)). CommSec's PID is 140 and in relation to ASB orders, the CommSec clearing ID number is 2. In July 2005, the broker number in the NCBO filter was changed from 140 to 1402 by an unidentified user on a shared admin login for an unknown reason. This meant that from July 2005 until the system fix on 25 May 2018, the NCBO filter had been attempting to identify orders with a broker number of 1402 instead of 140.
 - (b) Second, there was an account level issue. This arose as a result of the fact that the NCBO filter had been set up to identify trades between accounts with the same account number. However, ASB did not use a single unique identifier for each client and related parties of that client. The NCBO filter therefore did not identify trades between related parties or entities with the same beneficial owner, where ASB acted on behalf of both sides of the trade. This was not identified by CommSec until April 2018.
449. In December 2017, CommSec identified the parameter issue.
450. On 25 May 2018, CommSec fixed the parameter issue by changing the PID in the NCBO filter to 140 so that all ASB orders that may potentially cross are referred to the designated trading representative (DTR). The DTR then checked the orders and ensured that no orders from the same ASB account crossed.

451. After having identified the parameter issue, CommSec conducted further analysis to review additional historical trades that resulted in NCBO. This led to CommSec identifying the account level issue in April 2018.
452. On 2 November 2018, CommSec instructed the DTRs not to cross any ASB orders – that is, not to allow any transaction in which ASB acted on behalf of both the buyer and seller (irrespective of whether the ASB orders had different unique account identifiers in the origin of order field).
453. Around 6 November 2018, CommSec DTRs implemented a new procedure whereby possible NCBO transactions are referred to ASB for confirmation as to whether or not there would be a change in beneficial owner. Where orders were referred to a DTR, the DTR would follow the following procedure when submitting the orders to ASX or Chi-X:
- (a) the DTR would check the orders to ensure that no orders from the same ASB account would cross;
 - (b) where the DTR concludes that the ASB orders would not cross, the DTR would submit the orders to the relevant market;
 - (c) where there is a potential for a crossing, CommSec would contact ASB to obtain prior confirmation from ASB as to whether there will be a change of beneficial ownership;
 - (d) where ASB confirms there is a change in beneficial ownership, CommSec would allow the order. Where ASB confirms there is no change in beneficial ownership, CommSec will reject the order.
454. On 14 November 2018, CommSec notified ASIC of the AOP Issue.

II. CommSec admitted contraventions of s 798H of the Corporations Act

455. At all material times:
- (a) between 1 March 2015 and 6 May 2018, CommSec was subject to the ASX Rules, including rules 5.6.1(a) and 5.6.3(1)(a); and
 - (b) between 7 May 2018 and 1 November 2019, CommSec was subject to the Securities Market Rules, including rules 5.6.1(a) and 5.6.3(1)(a).
456. CommSec admits that, in the premises of paragraphs [445] to [454]:
- (a) it did not have an appropriate automated pre-trade filter to detect possible trades where there would be no change of beneficial owner in relation to the relevant AOP system through which orders from ASB customers were directed

between 1 March 2015 and 1 November 2018, and consequently, it contravened s 798H of the Corporations Act by reason of its contravention of rule 5.6.1(a) of the ASX Rules and the Securities Markets Rules;

- (b) it did not have in place an appropriate automated filter (as accepted above in relation to rule 5.6.1(a)), and for that reason, did not ensure that its AOP system had in place organisational and technical resources, between 1 March 2015 and 1 November 2018, and consequently it contravened s 798H of the Corporations Act by reason of its contravention of rule 5.6.3(1)(a) of the ASX Rules and the Securities Markets Rules.

I. BEST EXECUTION ISSUE

I. Background – CommSec

(a) Best Execution Policy Disclosure

457. CommSec's Best Execution Policy Disclosure (**BEP Disclosure**), dated 14 April 2014 provided that: "*Execution venues considered by CommSec when executing orders are ASX TradeMatch, ASX CentrePoint and Chi-X Australia.*" CommSec caused the BEP Disclosure to be published on the CommSec website at all material times between 1 March 2015 and 26 March 2018.
458. From 24 October 2013 to 26 March 2018 CommSec did not consider ASX CentrePoint (**ASXCP**) as an execution venue for CommSec clients who submitted orders via the ASB Securities Limited (**ASB**) trading platform (**ASB Clients**).
459. During that time, CommSec executed approximately 307,795 orders on behalf of ASB Clients. This amounted to approximately 1.36% of the total CommSec executed orders of approximately 22.6 million during that period. The number of orders executed on behalf of ASB Clients between 1 March 2015 and 26 March 2018 was approximately 226,484, representing 1.32% of total orders executed by CommSec during that period.
460. ASXCP is an anonymous mid-point matching system, commonly referred to as a "dark pool". It is a "dark" execution venue where orders are not known to the rest of the market before they are matched as executed trades (as distinct from a pre-trade transparent (or "lit") exchange market). ASXCP enables execution at the prevailing mid-point or other permitted price step inside the best bid and offer. The only types of orders which execute on ASXCP are market orders and limit orders (the latter being

orders to buy or sell a security at a specific price or better). An ASXCP order will only trade with another ASXCP order.

461. Only market orders and limit orders which are priced within the bid-ask spread could have been potentially executed on the ASXCP and would only have executed if there was sufficient liquidity in the relevant security on ASXCP at the time of the order. Based on the total CommSec orders executed on ASXCP between 1 October 2013 to 15 March 2018, CommSec estimates 8.3% of the 307,795 orders executed on behalf of ASB Clients or 25,500 orders may have executed on ASXCP.
462. In or around October 2013, CommSec staff decided to temporarily exclude ASXCP as an execution venue for ASB Clients in response to a technical issue identified by CommSec in around September 2013, whereby certain ASB Securities trades that executed on ASXCP as crossed trades did not appear to have been marked as crossed trades on the confirmation contract notes. At the time of that decision, for the prior 15 months, approximately 0.08% of all CommSec trades were initiated by ASB and executed on ASXCP. CommSec had considered the requirements of its best execution policy at the time and concluded that due to the very low volume of trades executed on that venue, the fact that ASXCP is a dark market, and the absence of required crossed trade notations on contract notes, it was not inconsistent with the policy to turn off ASXCP for ASB customers temporarily.
463. In May 2014, there was communication between ASB Securities and CommSec about the use of ASXCP, in which BEP disclosure was referenced. This included on 26 May 2014 the CommSec Equities designated trading representatives (DTR) team emailing ASB Securities confirming ASB Securities did not participate in ASXCP due to the technical issue with the contract notes. Despite fixes having been applied, another instance concerning a contract note crossing disclosure was identified, and it was determined not to re-enable ASXCP pending further review. No further review took place.
464. On 20 February 2017, a broker informed ASB that a client wished to know whether their order had been considered for participation in ASXCP. After making an enquiry, the CommSec Equities DTR team advised that ASB orders did not participate in ASXCP.
465. On 14 June 2017, ASB Risk & Compliance requested CommSec to confirm whether ASB Client Orders were directed to ASXCP, noting that they were concerned that the disclosure to clients in the BEP may not be correct.
466. On 18 July 2017, CommSec logged an internal compliance incident in RiskInSite. On 18 July 2017, there was an ASB-CommSec meeting in which CommSec raised the

issue of ASB orders not going to ASXCP, whether this was an issue from a best execution perspective, and testing a fix so that ASB orders going forward would be directed to ASXCP.

467. On 15 March 2018, after a Rapid Response meeting was held on 12 March 2018 regarding the matter, it was escalated to the Executive General Manager of CommSec.
468. On 26 March 2018, ASXCP was re-enabled as an execution venue for ASB Clients.
469. During September 2018, CommSec undertook customer remediation. As the ASXCP is an anonymous market in that the orders on ASXCP are hidden before the orders are matched and executed, it was not possible to identify the orders that would have executed on ASXCP, and so CommSec adopted certain assumptions as part of the remediation methodology. CommSec identified any orders that could have potentially executed on ASXCP by identifying the market orders and aggressive limit orders priced within the bid-ask spread and excluding those orders where at the time of the order, there was a bid but no offer (or vice versa) such that execution at the midpoint could not have taken place on ASXCP. (By definition an order could only execute on ASXCP if it was within the spread. Therefore the orders included for review were any market orders or aggressive limit orders.) As CommSec could not know the market at the time of placement an assumption was made that an aggressive order would execute almost immediately or at a price better than the limit. CommSec then compared the order time with the execution and the order price with the execution price to find the aggressive limit orders.
470. For all those orders which could have potentially executed on ASXCP, CommSec assumed that there would have been liquidity in the relevant security on ASXCP such that the order would have traded on ASXCP. Had the trade occurred on ASXCP the price of the trade would have been the mid point of the prevailing bid-offer spread. Based on the assumption that there was liquidity in ASXCP, CommSec estimated the price improvement that the client may have gained on ASXCP. Specifically, the price improvement was estimated to be half the difference between the prevailing bid-offer spread, which at a minimum varied from 0.05c to 0.5c per share, depending on the price of the stock.
471. Based on the assumptions set out above, between 2 October 2013 and 26 March 2018 approximately 128,133 executed orders (92,928 between 1 March 2015 and 26 March 2018) could potentially have executed on ASXCP. As noted above, it was not possible for CommSec to determine whether those orders would have (a) executed on ASXCP, or (b) received a better price on ASXCP, so CommSec remediated all of those orders.

472. In total, payments were made to 12,796 ASB Clients totalling \$397,271.93. Remediation included interest calculated at an annual rate of 7.94% from the date the trades occurred. A total of \$2,394.22 could not be refunded to 366 accounts. These funds were returned to CommSec and were subsequently distributed to charity.

473. Between 2014 and 2018, the number of trades resulting from orders of ASB Clients which could have potentially executed in ASXCP, as a proportion of the total number of CommSec domestic equity trades by CommSec in each calendar year is set out below:

2014	2015	2016	2017	2018
0.634%	0.453%	0.522%	0.496%	0.140%

(b) Best Execution Policy Monitoring (Auditor Notification)

474. In the period June 2016 to February 2019, CommSec's Best Execution Policies & Procedures (BEPP) provided as follows:

- (a) In June 2016, the BEPP provided in section 5.1.1 that Equities & Margin Lending (EML) Product Management will check on a monthly basis CommSec's 'Best Execution' performance using the IRESS IOS+ Trade Through Report (TTR).
- (b) Between July and November 2016, the BEPP provided in section 6.1.1 that EML Product Management was to monitor on a monthly basis CommSec's 'Best Execution Quality' performance using the TTR.
- (c) Between December 2016 and February 2019, the BEPP provided in section 6.1.1 that Product Risk Management (PRM) was to monitor on a monthly basis CommSec's Best Execution Quality performance using the TTR.

475. The obligation in the BEPP to monitor on a monthly basis was an obligation to monitor best execution quality performance for each month in the month immediately following or shortly thereafter. Between around July 2016 and February 2019, CommSec performed best execution quality performance monitoring on only nine occasions. In the period July 2016 to April 2018, CommSec performed monitoring at intervals of between approximately two to seven months. Monitoring for April 2018 to October 2018 did not take place until 26 March 2019.

476. Best execution quality performance monitoring was scheduled to occur in October 2018 but was deferred until November 2018 as the person with the necessary access to extract the TTR data from IRESS was not available due to other high-priority projects during October 2018.

477. On 27 November 2018, while attempting to perform monitoring of its best execution quality performance, CommSec encountered a technical error that prevented it from extracting the TTR data from IRESS. In particular, there was a 'timeout' when attempting to extract the TTR data for the period April to October 2018, which had the result that the data could not be extracted. It was subsequently identified that the timeout was likely caused by the high volume of data that needed to be extracted to run the TTR report for this period, leading to data volumes that the IT system could not process without timing out. The technical issue preventing the extraction of the required TTR data from IRESS had the result that monitoring of best execution performance did not occur when it was attempted on 27 November 2018 and after that until 26 March 2019 (**Data Non-Extraction**).
478. Accordingly, between July 2016 and February 2019, there were:
- (a) 28 months for which monitoring of best execution quality performance did not occur in the month immediately following or shortly thereafter – however, the monitoring for those months was undertaken at a later time (which was never more than 11 months later);
 - (b) four months for which monitoring of best execution quality performance did occur in the month immediately following or shortly thereafter (namely, September 2016, February 2017, March 2018 and February 2019).
479. Since March 2019, CommSec has performed best execution quality performance for each month in the month immediately following or shortly thereafter. The technical issue giving rise to the Data Non-Extraction was resolved on 10 May 2019.
480. Monitoring for each of the months in the period June 2016 to April 2019 did ultimately occur and the results of the best execution quality performance monitoring for that period was that the best execution quality performance benchmark was achieved. ASIC does not allege, and there is no evidence to indicate, that the issue caused financial loss to customers or that any customer remediation was required.
481. On 26 August 2019, the auditor of CommSec and AUSIEX, gave a notice to ASIC under sections 311 and 990K of the Corporations Act. In the notice, the auditor stated that from or around June 2016 to February 2019, CommSec and AUSIEX failed to conduct monitoring on their policies and procedures relating to best execution obligations.
- II. CommSec admitted contraventions of s 798H of the Corporations Act
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482. At all material times:

- (a) from 1 March 2015 through 6 May 2018, CommSec was subject to the Exchange Markets Rules, including rule 3.2.2;
- (b) from 7 May 2018 onwards, CommSec was subject to the Securities Markets Rules, including rules 3.9.2.

483. CommSec acknowledges that, in the premises of paragraphs [457] to [473] above, it failed to comply with its Best Execution Policy Disclosure as published on its website at all material times between 1 March 2015 and 26 March 2018. On that basis, CommSec admits there was a contravention of s 798H of the Corporations Act by reason of the fact that it did not comply with rule 3.2.2 of the Exchange Markets Rules.

484. CommSec further acknowledges that, in the premises of paragraphs [474] to [481], it failed to comply with the policies and procedures it had in place to comply with rules 3.2.1 of the Exchange Markets Rules and 3.9.1 of the Securities Markets Rules, in contravention of rules 3.2.2 of the Exchange Markets Rules and 3.9.2 of the Securities Markets Rules. On that basis, CommSec admits there was a contravention of s 798H of the Corporations Act by reason of the fact that it did not comply with rule 3.2.2 of the Exchange Markets Rules and its successor provision, rule 3.9.2 of the Securities Markets Rules.

III. CommSec admitted contraventions of s 12DB of the ASIC Act

485. At all material times from 1 March 2015 through 26 March 2018, in executing orders for ASB Clients, CommSec was providing financial services to those clients within the meaning of s 12BAB(1) and (7) of the ASIC Act.

486. CommSec acknowledges that, by publishing its Best Execution Policy Disclosure on its website between 1 March 2015 and 26 March 2018, in the manner referred to at paragraph [457] above, CommSec made representations to any ASB Clients who accessed the Best Execution Policy Disclosure and ASB which:

- (a) were made in trade or commerce;
- (b) were made in connection with the supply or possible supply of financial services;
and
- (c) constituted a false or misleading representation that services:
 - (i) were of a particular standard or quality; and/or
 - (ii) had performance characteristics,

in that the representation suggested that ASXCP would be considered when executing orders for ASB Clients, when in fact ASXCP was not available to, and was not considered, for ASB Clients.

487. In the premises of paragraph [486], CommSec contravened s 12DB(1)(a) of the ASIC Act, or alternatively, s 12DB(1)(e) of the ASIC Act. Although the parties do not know how many ASB Clients read and relied upon the representation, CommSec acknowledges that by reason of the publication of the Best Execution Policy Disclosure on its website, there was a prospect that the number of ASB Clients who accessed the Best Execution Policy Disclosure was not insubstantial.

IV. Background – AUSIEX

488. In the period December 2016 to February 2019, AUSIEX's Best Execution Policies & Procedures (**BEPP**) provided in section 6.1.1 that Product Risk Management (**PRM**) would check on a monthly basis AUSIEX's best execution performance using the IRESS IOS+ Trade Through Report (**TTR**). The previous version of the BEPP, applicable from June to December 2016, provided in section 5.1.1 that EML Product Management would check on a monthly basis AUSIEX's 'Best Execution' performance using the TTR.

489. AUSIEX acknowledges that it was required under the BEPP to monitor best execution quality performance for each month in the month immediately following or shortly thereafter.

490. The frequency of monitoring set out in paragraph [478] above for CommSec was the same for AUSIEX. ASIC does not allege, and there is no evidence to indicate, that the issue caused any financial loss to customers. The Data Non-Extraction issue identified above with respect to CommSec also affected AUSIEX and was fixed for AUSIEX on the same day as for CommSec. The auditor provided the same notice to ASIC for AUSIEX as for CommSec.

491. The results of the best execution quality performance monitoring for each of the months in the period June 2016 to April 2019 was the same for CommSec and AUSIEX – namely that the best execution quality performance benchmark was achieved. Since March 2019, AUSIEX's monitoring of best execution performance has occurred with the same frequency as CommSec – namely that it has occurred for each month in the month immediately following or shortly thereafter.

V. AUSIEX admitted contraventions of s 798H of the Corporations Act

492. At all material times:

- (a) from 1 March 2015 through 6 May 2018, AUSIEX was subject to the Exchange Markets Rules, including rule 3.2.2;
- (b) from 7 May 2018 onwards, AUSIEX was subject to the Securities Markets Rules, including rules 3.9.2.

493. AUSIEX acknowledges that, in the premises of paragraphs [488] to [491] above, it failed to comply with the policies and procedures it had in place to comply with rules 3.2.1 of the Exchange Markets Rules and 3.9.1 of the Securities Markets Rules. On that basis, AUSIEX admits there was a contravention of s 798H of the Corporations Act by reason of the fact that it did not comply with rule 3.2.2 of the Exchange Markets Rules and its successor provision, rule 3.9.2 of the Securities Markets Rules.

J. WARRANT AGREEMENT ISSUE

I. Background

494. Under the various iterations of the Market Integrity Rules, before accepting an initial order to trade in warrants from a retail client CommSec was required to provide a copy of the current explanatory statement in respect of warrants published by the relevant market operator (which could be done by providing a website link) and enter into a written agreement containing certain risk disclosures (being a Warrant Agreement Form (WAF)).

495. It was CommSec's usual practice to provide such customers with a warrant trading pack. The warrant trading pack referred to a risk disclosure statement, incorporated a WAF and included a link or a reference to the current explanatory booklets hosted on the ASX and Chi-X websites. From 25 August 2018, the WAF has also been offered digitally via a personal link sent to the customer. There were links to the explanatory booklets and the warrant trading pack on CommSec's website at all material times from at least 2010.

496. Between 22 April 2004 and 18 June 2020, CommSec allowed 46 accounts associated with 70 retail clients to purchase warrants in circumstances where CommSec:

- (a) cannot establish that it provided a copy of the current explanatory booklet in respect of warrants, published by operator of the relevant market (and so accepts that it did not do so); and
- (b) is unable to locate a valid Warrant Agreement Form (WAF) on record (and so accepts that it did not provide a WAF),

impacting approximately 472 buy transactions (the **Warrant Agreement Issue**).

497. Between 1 March 2015 and 18 June 2020, 32 accounts associated with 49 retail clients, impacting 408 buy transactions were affected by the Warrant Agreement Issue. Of these:
- (a) 19 accounts associated with 32 retail clients, impacting 331 buy transactions were affected by the Warrant Agreement Issue between 1 March 2015 and 12 March 2019;
 - (b) 16 accounts associated with 21 retail clients (including 3 accounts associated with 4 retail clients who had traded before 13 March 2019), impacting 77 buy transactions were affected by the Warrant Agreement Issue on or after 13 March 2019.
498. The cause of the instances prior to 2014 has not been established. Where the Warrant Agreement Issue arose from mid-2014, it was caused by design deficiencies in the logic of the computer program coding of key workflows between three CommSec systems, namely, the CommSec vetting engine, Customer Service Console (CSC) and the Trading System. Specifically, two scenarios were identified which caused the warrant trading flag for a client account in the CommSec vetting engine to be incorrectly changed to 'Yes' in error (enabling the client account to trade in warrants). Those inadvertent errors were unknown until they were identified by CommSec in about August 2019.
499. On 12 September 2019 and 30 November 2019, IT fixes were implemented to address the above scenarios. This capped the Warrant Agreement Issue from occurring in respect of new clients.
500. Between March and May 2020, CommSec undertook a checking process in respect of accounts of clients with a history of having traded in warrants (at that stage approximately 550 accounts) to seek to ascertain whether they had agreed a WAF (which would include an acknowledgement of receipt of the explanatory statement). This process identified 104 client accounts as potentially not having received a WAF.
501. On 22 May 2020, CommSec disabled the functionality to trade warrants for those 104 clients. Where those clients had an open position, they were contacted, directed to the explanatory booklets published by ASX and Chi-X and invited to complete a new WAF to have the functionality to trade warrants restored to their account. CommSec also attempted to contact the balance of the clients for the 104 accounts between 25 and 27 May 2020. Subsequent inquiries reduced this cohort to 46 accounts, of which 32 traded after 1 March 2015.

502. Between 23 June 2020 and 26 June 2020, CommSec disabled the functionality to trade warrants for:
- (a) a further two clients (2 accounts) who traded warrants for the first time after the data used to disable accounts on 22 May 2020 had been finalised; and
 - (b) existing clients (457,505 accounts) who had not previously traded warrants. A further 62 accounts who had never traded warrants were later identified in further checking processes, and their functionality to trade warrants was disabled by 28 July 2020.
503. CommSec has reviewed client accounts and has remediated clients who incurred a net loss on their account from trading in warrants during the period without a valid WAF on record. CommSec provided remediation without requiring the customer to establish they did not receive the relevant risk disclosures and regardless of whether the customer would have traded irrespective of the relevant risk disclosures. CommSec has calculated compensation for 28 impacted accounts to be \$954,800.17 excluding brokerage refunds and interest. Partial compensation payments of \$283,254.69 were made in respect of 2 (of the 28) accounts on 12 June and 10 July 2020, with the balance of payments made on 30 September 2020 and 30 October 2020. Of the 28 impacted accounts, 22 traded on or after 1 March 2015 and were remediated \$910,506.20 (inclusive of accounts paid earlier than September). Conversely, the remaining 10 accounts which traded on or after 1 March 2015 made a profit.
504. Throughout the period from 1 March 2015 onwards, the CommSec website provided links to the explanatory booklets (which were hosted on the ASX and Chi-X websites) and the warrant trading pack.
505. A new daily control report was introduced on 20 March 2020 to identify discrepancies in the 'warrant trading flag' between CommSec's systems. This is reviewed by the CommSec IT team. Discrepancies are escalated to the Product Risk team for investigation. Genuine exceptions will be rectified by contacting the customer and offering to close them out, and reimbursing any loss as well as requesting IT to deactivate the accounts ability to trade warrants. Where a customer requests to keep their position they are required to complete a client agreement and acknowledge the risk disclosures and accept the risk of keeping their existing position open without being remediated.
506. Between 1 March 2015 and 18 June 2020, the number of warrant buy trades in respect of which the Warrant Agreement Issue arose, as a proportion of the total number of warrant buy trades for the period was approximately 0.31%.

II. CommSec admitted contraventions of s 798H of the Corporations Act

507. At all material times:

- (a) from 1 March 2015 through 6 May 2018, CommSec was subject to the ASX Rules, including rules 3.1.2 and 3.1.8;
- (b) from 7 May 2018 onwards, CommSec was subject to the Securities Markets Rules, rules 3.1.2 and 3.1.8.

508. The failure by CommSec to provide the 49 retail clients (who between them held 32 accounts) referred to in paragraph [497] above with a copy of the explanatory booklet prior to accepting the first order to purchase a warrant traded on the account in the period 1 March 2015 to 18 June 2020, constituted a contravention of rule 3.1.2(3) of the ASX Rules or the Securities Markets Rules respectively in respect of each client account.

509. The failure by CommSec to ensure that the 49 retail clients (who between them held 32 accounts) referred to in paragraph [497] above had entered into a valid Warrant Agreement Form before entering into orders to purchase a warrant traded on the account between 1 March 2015 to 18 June 2020, constituted a contravention of rule 3.1.8 of the ASX Rules or the Securities Markets Rules respectively, in respect of the 376 buy transactions entered into (additional to the 32 orders referred to in the preceding paragraph).

510. In the premises of paragraphs [497], [508] and [509] above, CommSec contravened s 798H of the Corporations Act:

- (a) on 331 occasions between 1 March 2015 and 12 March 2019; and
- (b) on 77 occasions between 13 March 2019 and 18 June 2020.

K. REGULATORY DATA ISSUE

I. Background – CommSec

511. At all material times, CommSec was obliged by rule 5A.2.1(1) of the Exchange Market Rules or rule 7.4.2(1) of the Securities Markets Rules to provide certain information about trades (defined as "Regulatory Data" in those rules) to a market operator in orders transmitted by CommSec to the order book of that market operator. One item that was required to be provided when the market participant acted as agent for an AOP client that itself held an AFSL (and there was an arrangement for the participant to place orders for the clients of the AOP client), was the AFSL of that AOP client of the

participant. This AFSL number is referred to as an Intermediary ID. Accordingly, when Commonwealth Private Limited's (CPL) advisers placed orders for clients using CommSec's CSC and IRESS, CommSec was obliged to include CPL's AFSL as the Intermediary ID in the Regulatory Data provided to the market operator. As set out in this section below, CommSec did not include CPL's AFSL as the Intermediary ID in the Regulatory Data provided to market operators for orders placed by CPL advisers as a result of an incorrect view formed by CommSec staff in 2014 of the requirements of rule 5A.2.1(1). ASIC does not allege, and there is not evidence to indicate, that this caused any loss to customers.

(a) Failure to provide intermediary IDs: 1 March 2015 - 5 February 2019

512. From 1 March 2015 to 5 February 2019, the regulatory data provided by CommSec to ASX and Chi-X, two market operators, did not include CPL's AFSL in the intermediary ID field for orders placed by CPL advisers via the CommSec CSC and IRESS. The issue affected the data submitted by CommSec for 83,877 orders.
513. In 2014, CommSec had formed the incorrect view that CPL's AFSL should not be included in the regulatory data provided to ASX and Chi-X for orders placed by CPL because:
- (a) CommSec had taken ASIC Regulatory Guide 233 to mean that the Intermediary ID was only required to be provided where there was a white label broking arrangement in place;
 - (b) CommSec's arrangement with CPL was not considered to be a white label broking arrangement, as the clients had a direct relationship with CommSec to the extent that CommSec may receive instructions from clients on both a self-directed and advised basis; and
 - (c) There was an email exchange between CommSec and ASIC in October 2013 which was incorrectly taken by CommSec to confirm CommSec's interpretation of Regulatory Guide 233, notwithstanding that the email exchange with ASIC did not directly address the CommSec-CPL relationship.
514. In September 2018, CommSec was confirming the business activity metrics to ASIC which are used by ASIC to calculate the industry funding levy required to be paid to ASIC. One of ASIC's metrics is the securities dealer metric, being the amount charged to AFSL holders for trades executed by the AFSL holder on the market.
515. In the process of confirming the business activity metrics, CommSec revisited the decision in 2014 not to include CPL's AFSL in the regulatory data submitted to ASX

and Chi-X. In October 2018, CommSec formed the view that the CPL AFSL was required to be included in regulatory data provided to the ASX and Chi-X under the Market Integrity Rules. On 23 November 2018, CommSec telephoned ASIC to inform ASIC of the approach it had taken to date and that it had formed the view that the better approach was to include the intermediary ID for CPL's AFSL and that it would do so going forward. In that telephone call, ASIC confirmed its expectation that CPL's AFSL should be included in the regulatory data provided to exchanges

516. On 7 January 2019, CommSec reported the matter to ASIC pursuant to s 912D of the Corporations Act. On 7 January 2019, CommSec also provided to ASIC the number of orders placed by CPL advisers into CommSec's systems directly for the period between 28 July 2014 and 12 December 2018, and for the balance for the financial year ending June 2019, CommSec provided that data on 24 July 2019.
517. CommSec has taken the following steps to ensure that regulatory data submitted in relation to orders placed by CPL advisers using CommSec's CSC or IRESS contain CPL's AFSL number, including on 5 February 2019:
- (a) CommSec notified CPL advisers that they were to place all trades over the phone with a CommSec staff member placing the order or via a configuration of IRESS set up for CPL advisers.
 - (b) CPL advisers' "trading access" to CommSec's CSC system was removed, such that the CPL advisers were only left with "view-only access" to CSC.
518. A system change was made to ensure that the configuration of IRESS that CPL advisers use includes the CPL AFSL so that this data can be reported to the ASX and Chi-X.
- (b) Failure to provide intermediary IDs: 18 March 2019 – 18 July 2019
-
519. On 19 July 2019, when CommSec was in the course of reviewing the CPL trade data for the FY2019 industry levy to provide to ASIC, CommSec identified that an adviser who transferred from CommSec to CPL in January 2019 retained access to their IOS profile provided to them by CommSec. Following the adviser's transfer to CPL, the adviser continued to use their CommSec Advisory IOS profile to submit orders to ASX and Chi-X. As a result, the regulatory data provided by CommSec to ASX and Chi-X for those orders inadvertently did not include CPL's AFSL number.
520. By reason of the above, from 18 March 2019 to 18 July 2019, CommSec submitted data to ASX and Chi-X for 319 orders (of which 2 were not executed) where the orders did not include the CPL AFSL as an intermediary ID for orders placed by CPL advisers

via the CSC and IRESS. The total value of the trades resulting from the 319 orders was \$3,663,069.14.

521. CommSec reported the issue to ASIC on 27 August 2019.

II. CommSec admitted contraventions of s 798H of the Corporations Act

522. At all material times:

- (a) from 1 March 2015 through 6 May 2018, CommSec was subject to the Exchange Market Rules, including rule 5A.2.1;
- (b) from 7 May 2018 onwards, CommSec was subject to the Securities Markets Rules, including rule 7.4.2(1).

523. In respect of the orders referred to paragraphs [512] and [519] above, CommSec was:

- (a) acting as an agent for an AOP client (within the meaning of rule 5A.2.1(1) of the Exchange Market Rules or rule 7.4.2(1) of the Securities Market Rules) that was an AFSL holder; and
- (b) had an arrangement with that AFSL holder under which the AFSL holder submitted trading messages into CommSec's system as intermediary for its own clients.

524. In the premises of paragraphs [512], [519], [520] and [523] above, CommSec admits that it contravened rule 5A.2.1(1) of the Exchange Market Rules between 1 March 2015 and 6 May 2018, and contravened rule 7.4.2(1) of the Securities Markets Rules between 7 May 2018 and 18 July 2019. On that basis CommSec admits it contravened s 798H of the Corporations Act on:

- (a) 83,877 occasions between 1 March 2015 through 5 February 2019; and
- (b) 319 occasions between 18 March 2019 and 18 July 2019.

525. Between 2014 and 2019, the number of trades resulting from orders in respect of which the data submitted by CommSec to the relevant exchanges was missing the CPL AFSL in the intermediary ID field, as a proportion of the total number of domestic equity trades by CommSec was approximately:

2014	2015	2016	2017	2018	2019
0.371%	0.846%	0.688%	0.581%	0.469%	0.001%

III. Background – AUSIEX

526. At all material times, AUSIEX was obliged by the Exchange Market Rules or Securities Markets Rules to provide Regulatory Data to a market operator in orders transmitted by AUSIEX to the order book of that market operator. When AUSIEX's AFSL clients placed orders for clients using AUSIEX's CSC, AUSIEX was obliged to include that client's AFSL in the regulatory data provided to the market operator including where applicable Intermediary IDs. These errors were the result of either incorrect data being used for the intermediary's AFSL or data missing in the relevant information technology systems.

(a) Failure to provide intermediary IDs: 27 October 2016 – 8 February 2019

527. From 27 October 2016 to 8 February 2019, AUSIEX provided an erroneous number ("217306") in the intermediary ID field for orders placed by one of AUSIEX's AFSL clients, via the CSC. At the time the orders were placed no licensee held the AFSL number 217306. The field should have been populated with the correct AFSL number for that client. The erroneous number was provided for 29 orders.

528. The incident was identified on 5 July 2019 following an enquiry from ASIC, and AUSIEX reported the matter as a significant breach to ASIC on 19 August 2019.

529. The error occurred because at the operational level, the incorrect AFSL "217306" had been incorrectly recorded in the AFSL number field in AUSIEX's CSC system. That number was an earlier licence number of the relevant client.

530. On 5 July 2019, the value was corrected in CSC to the correct AFSL number. When the intermediary places an order in SHY (AUSIEX's automated order processing system), SHY automatically sources the AFSL number from CSC before distributing that data to the relevant market venue, either ASX or Chi-X. The correction on CSC caused the correct AFSL number in the Intermediary ID value to flow through to the data submitted to ASX or Chi-X.

(b) Failure to provide intermediary IDs: 2 February 2018 – 12 August 2019

531. From 2 February 2018 to 12 August 2019, AUSIEX failed to provide an AFSL number in the intermediary ID field in respect of one of its intermediary clients which is an Australian Financial Services licensee (**AFSL Intermediary Client**).

532. The issue arose because an AFSL number for the AFSL Intermediary Client was not recorded in AUSIEX's CSC system. The request to onboard the AFSL Intermediary

Client in December 2017 correctly noted the AFSL number of the AFSL Intermediary Client, and it is likely that the issue was caused by a staff member failing to record the AFSL Intermediary Client's AFSL number in CSC.

533. The AFSL Intermediary Client placed 84 orders between 2 February 2018 and 12 August 2019, and the data submitted by AUSIEX to the relevant exchanges for those orders did not include an AFSL number in the Intermediary ID field.

534. The number of orders placed by the AFSL Intermediary Client in respect of which data provided by AUSIEX to the relevant exchanges did not include the AFSL Intermediary Client's AFSL in the intermediary ID were as follows:

	Orders	Buy transaction value	Sell transaction value	Total transaction value
FY 2017-18	32	\$926,257.53	\$758,593.74	\$1,684,851.27
FY 2018-19	44	\$1,253,177.15	\$874,741.19	\$2,127,918.34
FY 2019-20	8	\$114,940.635	\$65,019.61	\$179,960.245

535. Of the 84 orders, 71 orders were placed before 13 March 2019 and 13 orders were placed after 13 March 2019.

(c) Proportion of affected orders

536. Between 2016 and 2019, the number of trades resulting from orders in respect of which the data submitted by AUSIEX to the relevant exchanges contained the incorrect AFSL number "217306" or was missing the AFSL Intermediary Client's AFSL, as a proportion of the total number of domestic equity trades by AUSIEX was approximately:

2016	2017	2018	2019
0.0014%	0.0000%	0.0084%	0.0000689%

IV. AUSIEX admitted contraventions of s 798H of the Corporations Act

537. At all material times:

- (a) from 1 March 2015 through 6 May 2018, AUSIEX was subject to the Exchange Market Rules, including rule 5A.2.1;
- (b) from 7 May 2018 onwards, AUSIEX was subject to the Securities Markets Rules, including rule 7.4.2(1).

538. In respect of the orders referred to paragraphs [527] and [531] above, AUSIEX was:

- (a) acting as an agent for an AOP client that was an AFSL holder; and
- (b) had an arrangement with that AFSL holder under which the AFSL holder submitted trading messages into AUSIEX's system as intermediary for its own clients.

539. In the premises of paragraphs [526] to [538] above, AUSIEX admits that it contravened rule 5A.2.1(1) of the Exchange Market Rules between 26 October 2016 and 6 May 2018, and contravened rule 7.4.2(1) of the Securities Markets Rules between 7 May 2018 and 12 August 2019. On that basis CommSec admits it contravened s 798H of the Corporations Act, on:

- (a) 100 occasions between 27 October 2016 and 12 March 2019; and
- (b) 13 occasions between 13 March 2019 and 12 August 2019.

**L. FAILURE TO PROVIDE FINANCIAL SERVICES EFFICIENTLY, HONESTLY AND FAIRLY:
ADMITTED CONTRAVENTIONS OF CORPORATIONS ACT s 912A(1)(a)**

I. Background

540. CommSec and AUSIEX are part of the CBA Group. The CommSec and AUSIEX participants together are commonly known as the CommSec business unit. A substantial aspect of their compliance and governance arrangements entail the application of CBA Group processes, policies and procedures. The oversight of the business unit are substantially shared, notwithstanding that separate processes may exist. (In April 2020, CBA entered into an agreement to sell AUSIEX to an unrelated third party, with the legal completion of the AUSIEX sale yet to occur.)

541. At the start of 2019, the CBA Group, including CommSec and AUSIEX, updated its approach to root cause categorisation in the Root Cause Analysis Procedure, which provided for a standardised approach to root cause categorisation. This approach included a defined taxonomy of root cause types set out in the Root Cause Categorisation Library (**Root Cause Categorisation document**). The Root Cause Categorisation document is a document that supports the CBA Group Issue Management Standard (the **Issue Management Standard**), CBA Group Compliance Incident Standard (the **Compliance Incident Standard**) and the Root Cause Analysis Procedure.

542. In order to assist identifying common underlying factors in respect of the Reported Conduct (other than the Regulatory Data Issue), CommSec and AUSIEX reviewed the

root cause categorisation recorded in RiskInSite for each issue, reviewed the relevant fact find and the regulatory notification for some of the issues, and identified root cause categories common to more than one item of Reported Conduct. RiskInSite is CBA's system for managing operational risk and compliance risk across the CBA Group. An incident must be recorded in RiskInSite if the outcome of a business process (that is regulated by law, regulations, industry standards or codes) differs from the expected outcome due to inadequate or failed process, people, or systems and external events.

543. The root cause categorisation for each issue recorded in CommSec and AUSIEX's systems reflects a subjective assessment by the relevant staff who logged the issue in those systems, of the categories in the Root Cause Categorisation document which they identified as best fitting the issue, based on the information known to them at the time. The categorisation recorded in CommSec and AUSIEX's systems was not necessarily updated subsequently to reflect any changes to CommSec and AUSIEX's understanding of the root causes. The categories available to be selected are defined in the Root Cause Categorisation Library and cannot be amended by staff members who identify the root cause. As a result the root causes identified are a best approximate estimate of root cause by the staff based on the data that individual had at the time.
544. Further, as many of the items of Reported Conduct pre-dated the updated approach to standardised root cause categorisation in 2019, a task was undertaken for those items to assign a root cause categorisation that the employee undertaking the task considered best fitted the documentation in line with the Root Cause Categorisation document (where not already aligned).
545. The defined taxonomy of root cause types is set out in the Root Cause Categorisation document, which sets out root cause types at three levels (Level 1, 2 and 3), with each level progressively more granular. Root cause types at the broadest level (Level 1) within that taxonomy are as follows:
- (a) People, matters related to staff;
 - (b) Process, matters related to processes and controls;
 - (c) Systems, matters related to systems; and
 - (d) External, matters external to the CBA Group such as third parties, natural disasters or external fraud.
546. Examples of root cause categories at the next level (Level 2) within the taxonomy include the following:

- (a) in relation to People, "Failure to follow processes and/or controls";
- (b) in relation to Process, "Inadequate and/or Outdated Policies or Procedures";
- (c) in relation to Systems, "System Change".

547. Examples of root cause categories at the most granular level (Level 3) within the taxonomy include the following:

- (a) in relation to People – Failure to follow process and/or controls - "Staff did not follow policies / standards / procedures";
- (b) in relation to Process – Inadequate and/or Outdated Policies or Procedures - "Current standards, policies and/or procedures were not adequately designed to address or clearly describe risks and/or related controls";
- (c) in relation to Systems – System Change - "Business requirements incorrectly coded/inadequately incorporated in the system specifications".

II. CommSec Findings

548. Applying the root cause categorisation approach described in the Background Section, CommSec has identified root cause categories common to more than one item of Reported Conduct and identified Levels 1, 2 and 3 root cause categories for each item of Reported Conduct.

549. Systems, has been identified as common to Reported Conduct in respect of the issues listed below (although not all matters within each of those issues were identified to this categorisation):

- (a) Trade Confirmations Issue;
- (b) Brokerage Issue;
- (c) Client Money Issue;
- (d) Warrant Agreement Issue.

550. Process, has been identified as common to Reported Conduct in respect of the issues listed below (although not all matters within each of those issues were identified to this categorisation, with the exception of the Best Execution Issue):

- (a) AOP Issue;
- (b) Brokerage Issue;
- (c) Best Execution Issue;
- (d) Client Money Issue.

551. People, has been identified as common to Reported Conduct in respect of the issues listed below (although not all matters within each of those issues were identified to this categorisation):
- (a) Client Money Issue;
 - (b) Trade Confirmations Issue.
552. The following Level 3 categorisation (and its associated Level 1 and 2 categorisations) from the Root Cause Categorisation document has been identified in respect of the AOP Issue and one of the Reported Conduct matters in respect of the Client Monies Issue:
- (a) Process (Level 1):
 - (b) Inadequate and/or Outdated Policies or Procedures (Level 2)
 - (c) Current standards, policies and/or procedures were not adequately designed to address or clearly describe risks and/or related controls (Level 3).
553. The following Level 3 categorisation (and its associated Level 1 and 2 categorisations) from the Root Cause Categorisation document has been identified in one or more of the Reported Conduct matters in respect of the Trade Confirmation Issue and Client Monies Issue:
- (a) Systems (Level 1)
 - (b) System change (Level 2)
 - (c) Business requirements were incorrectly coded/ inadequately incorporated in the system specifications (Level 3).
554. The following Level 3 categorisation (and its associated Level 1 and 2 categorisations) from the Root Cause Categorisation document has been identified in one or more of the Reported Conduct matters in respect of the Trade Confirmation Issue and Client Monies Issue:
- (a) Systems (Level 1)
 - (b) System design (Level 2)
 - (c) Inadequate / Ineffective testing of specified system requirements (Level 3).
555. The following Level 3 categorisation (and its associated Level 1 and 2 categorisations) from the Root Cause Categorisation document has been identified in one or more of the Reported Conduct matters in respect of the Best Execution Issue and the Brokerage Issue:

- (a) Process (Level 1)
- (b) Inadequate Change management (non IT) (Level 2)
- (c) Inadequate design and development of change (scoping, approval, assessment, etc.) (Level 3).

556. The following Level 3 categorisation (and its associated Level 1 and 2 categorisations) from the Root Cause Categorisation document has been identified in one of the Reported Conduct matters in respect of the Client Money Issue and one of the Reported Conduct matters in respect of the Trade Confirmations Issue:

- (a) Systems (Level 1):
- (b) System design (Level 2)
- (c) System specifications including user requirements were not adequately captured (Level 3)

557. The review identified the design effectiveness of processes, procedures and system change as other underlying factors of the categorisations. Further, control testing was not sufficiently focussed on the suitability and design of all controls in the process, including with regard to completeness or adequacy of how each control ensured compliance with regulatory obligations. A lack of end to end process mapping created difficulties in ensuring there were no procedural gaps and that there was full visibility and understanding of controls and obligations that related to those processes.

558. The root cause categorisations from the Root Cause Categorisation document identified from the material outlined at paragraph [541] above for each incident or matter recorded is set out below:

(a) Trade Confirmations Issue

Reference	Level 1	Level 2	Level 3
Strike Price Issue Contract Size Issue Traded Value Issue OPIC Issue Partially Assigned/	Systems	System change	Business requirements incorrectly coded / inadequately incorporated in the system specification

Exercised Issue Partially Expired Issue GST Issue			
Rebookings Issue	Systems	System change	Business requirements incorrectly coded / inadequately incorporated in system specifications
Equities Crossing Disclosure	Systems	System design	Inadequate/Ineffective testing of specified system requirements
Equities Trade Confirmation Issue	People	Insufficient organisational oversight & accountability	No checks or adequate checks performed
Rebooked Trade Confirmations issue	Systems	System design	System specifications including user requirements were not adequately captured

(b) AOP Issue

Reference	Level 1	Level 2	Level 3
Whole issue	Process	Inadequate and/or outdated policies or procedures	Current Standards, Policies and/or procedures not adequately designed to address or clearly describe risks and/or related controls

(c) Brokerage Issues

Reference	Level 1	Level 2	Level 3

N-override brokerage issue	Systems	System change	Inadequate/ineffective testing of specified system requirements
Advertised online brokerage issue	Systems	System change	Inadequate/ineffective testing of specified system requirements
Advertised phone brokerage issue	Process	Weakness in Process/Control design	Manual workarounds/processes contributing to errors
ESUPERFUND issue	Process	Inadequate Change management (non IT)	Inadequate design and development of change (scoping, approval, assessment, etc.)

(d) Best Execution Issue

Reference	Level 1	Level 2	Level 3
Best Execution Policy Disclosure	Process	Inadequate Regulatory Change Management	Policies/Standards/ Procedures were not adequate or have not been updated to comply with new or amended laws/ regulations
Best execution policy monitoring	Process	Inadequate Change management (non IT)	Inadequate design and development of change (scoping, approval, assessment, etc.)

(e) Client Money Issue

Reference	Level 1	Level 2	Level 3
Items (a), (b), (c), (d)	Systems	System design	System specifications including user requirements were not adequately captured

Item (e)	People	Inadequate/ inappropriate resourcing and/or experience	Staff did not have the requisite skills/experience to perform required activities
Item (f)	Systems	System design	System specifications including user requirements were not adequately captured
Item (g)	Systems	System change	Business requirements incorrectly coded / inadequately incorporated in the system specification
Item (h)	Systems	System maintenance	Outdated and/or incompatible system/software versions
Item (i)	Systems	System design	Inadequate / ineffective testing of specified system requirements
Item (j)	Process	Inadequate and/or Outdated Policies or Procedures	Policies/Standards/ Procedures were not adequate/not updated
Items (k) and (l)	Systems	System design	System specifications including user requirements were not adequately captured
Item (m)	Process	Inadequate and/or Outdated Policies or Procedures	Current Standards, Policies and/or procedures are not adequately designed to address or clearly

			describe risks and/or related controls
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(f) Warrant Agreement Issue

Reference	Level 1	Level 2	Level 3
Whole issue	Systems	System security	Inadequate/Ineffective system access controls

III. CommSec admission of contravention of s 912A(1)(a) of Corporations Act

559. At all material times from 1 March 2015 to the present, as the holder of the CommSec Licence, CommSec was required pursuant to s 912A(1)(a) of the Corporations Act, to do all things necessary to ensure that the financial services covered by the Licence were provided efficiently, honestly and fairly.

560. CommSec acknowledges that each of the:

- (a) Brokerage Issues;
 - (b) Client Money Issues;
 - (c) Trade Confirmations Issues;
 - (d) AOP Issues;
 - (e) Best Execution Issues; and
 - (f) Warrant Agreement Issues,
- arose in the context of CommSec:
- (g) dealing in financial products for the purposes of s 766C of the Corporations Act; and
 - (h) providing financial services for the purposes of s 766A of the Corporations Act.

561. CommSec admits that, having regard to:

- (a) the Brokerage Issues;
- (b) the Client Money Issues (until the implementation of Project Rampart);
- (c) the Trade Confirmation Issues (until the implementation of Project Umbrella);
- (d) the AOP Issues;
- (e) the Best Execution Issues;
- (f) the Warrant Agreement Issues; and

- (g) the CommSec findings from the root cause analysis regarding failures in systems, process, and people referred to at paragraphs [548] to [558] above,

CommSec failed to do all things necessary to ensure that its financial services, particularly in relation to the Reported Conduct, were provided efficiently, honestly and fairly for the period 1 March 2015 to 18 June 2020, in contravention of s 912A(1)(a) of the Corporations Act.

IV. AUSIEX Findings

562. Applying the root cause categorisation approach described in the Background Section, AUSIEX has identified root cause categories common to more than one item of Reported Conduct and identified Levels 1, 2 and 3 root cause categories for each item of Reported Conduct.
563. Process has been identified as common to Reported Conduct in respect of the issues listed below (although not all matters within each of those issues were identified to this categorisation, with the exception of the Best Execution Issue):
- (a) Client Money Issue;
 - (b) Trade Confirmations Issue;
 - (c) Best Execution Issue.
564. System has been identified as common to Reported Conduct in respect of the issues listed below (although not all matters within each of those issues were identified to this categorisation):
- (a) Client Money Issue;
 - (b) Trade Confirmations Issue.
565. The following Level 3 categorisation (and its associated Level 1 and 2 categorisations) from the Root Cause Categorisation document have been identified in one of the Reported Conduct matters in respect of each of the Client Money Issue and the Trade Confirmations Issue:
- (a) Systems (Level 1):
 - (b) System design (Level 2)
 - (c) System specifications, including requirements, was not adequately captured (Level 3)

566. The following Level 3 categorisation (and its associated Level 1 and 2 categorisations) from the Root Cause Categorisation document has been identified in more than one of the Reported Conduct matters in respect of the Trade Confirmations Issue:

- (a) Processes (Level 1):
- (b) Inadequate and/or Outdated Policies or Procedures (Level 2)
- (c) Current Standards, Policies and/or Procedures were not adequately designed to address or clearly describe risks and/or related controls (Level 3)

567. The review identified the design effectiveness of processes, procedures and system change as other underlying factors of the categorisations. Further, control testing was not sufficiently focussed on the suitability and design of all controls in the process, including with regard to completeness or adequacy of how each control ensured compliance with regulatory obligations. A lack of end to end process mapping created difficulties in ensuring there were no procedural gaps and that there was full visibility and understanding of controls and obligations that related to those processes.

568. The root cause categorisations from the Root Cause Categorisation document identified from the material outlined at paragraph [541] above for each incident or matter recorded is set out below:

(a) Client Monies Issue

Reference	Level 1	Level 2	Level 3
Item (a)	Systems	System design	System specifications including user requirements were not adequately captured
Item (b)	Systems	System design	Inadequate/ ineffective testing of specified system requirements
Item (c)	Process	Inadequate change management (non IT)	Inadequate design and development of change (scoping, approval, assessment etc)
Item (d)	Process	Inadequate and/or Outdated Policies or Procedures	Policies/Standards/Procedures were not adequate/not updated

(b) Trade Confirmations Issue

Reference	Level 1	Level 2	Level 3
Settlement Value Issue Contract Size Issue Traded Value Issue OPIC Issue Intermediary's Clients Confirmation Issue Expiry Date Issue Partially Assigned/Exercised Issue Partially Expired Issue Buy Trades Issue ASX Clear Fees Issue GST Issue	Process	Inadequate and/or outdated policies or procedures	Current standards, policies and/or procedures were not adequately designed to address or clearly describe risks and/or related controls
Equities Crossing Disclosure	Systems	System design	Inadequate/Ineffective testing of specified system requirements
Equities Trade Confirmation Issue	People	Insufficient organisational oversight & accountability	No checks or adequate checks performed
Rebooked Trade Confirmations issue	Systems	System design	System specifications including user requirements were not adequately captured

(c) Best Execution Issues

Reference	Level 1	Level 2	Level 3
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Best execution policy monitoring	Process	Inadequate Change Management (non IT)	Policies/standards/procedures were not Inadequate design and development of change (scoping, approval, assessment, etc.)
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V. AUSIEX admission of contravention of s 912A(1)(a) of Corporations Act

569. At all material times from 1 March 2015 to the present, as the holder of the AUSIEX Licence, AUSIEX was required pursuant to s 912A(1)(a) of the Corporations Act, to do all things necessary to ensure that the financial services covered by the Licence were provided efficiently, honestly and fairly.

570. AUSIEX acknowledges that each of the:

- (a) Client Money Issues;
- (b) Trade Confirmations Issues; and
- (c) Best Execution Issues;

arose in the context of AUSIEX:

- (d) dealing in financial products for the purposes of s 766C of the Corporations Act; and
- (e) providing financial services for the purposes of s 766A of the Corporations Act.

571. AUSIEX admits that, having regard to:

- (a) the Client Money Issues (up until the implementation of Project Rampart);
- (b) the Trade Confirmation Issues (up until the implementation of Project Umbrella);
- (c) the Best Execution Issues; and
- (d) the AUSIEX findings from the root cause analysis regarding failures in systems, process, and people referred to at paragraphs [562] to [568] above,

AUSIEX failed to do all things necessary to ensure that its financial services, particularly in relation to the Reported Conduct, were provided efficiently, honestly and fairly for the period 1 March 2015 to February 2019, in contravention of s 912A(1)(a) of the Corporations Act.

M. OTHER BACKGROUND MATTERS

I. Antecedent contraventions underpinning civil penalty approach

572. Notwithstanding the existence of a range of policies and processes designed to manage regulatory and business risk, CommSec has been before the ASIC Markets Disciplinary Panel (MDP) on seven previous occasions for contraventions of the *ASIC Market Integrity Rules (ASX Market) 2010* and *ASIC Market Integrity (Competition in Exchange Markets) Rules 2011* since 2012, receiving fines totalling \$1,055,000. In particular, CommSec was found to have contravened:
- (a) rule 5.9.1 – market must remain fair and orderly;
 - (b) rule 5.5.2 – organisational and technical resources;
 - (c) rule 4A.3.2 – disclosure requirements for crossing systems;
 - (d) rules 3.2.3 and 3.4.1 – inaccurate confirmations; and
 - (e) rules 2.1.3 and 3.3.1 – client instructions and supervisory procedures.
573. On 17 December 2013, ASIC entered into a Court Enforceable Undertaking (CEU) with CommSec and AUSIEX, primarily in relation to possible contraventions of their client money handling requirements under sections 981B and 981C of the Corporations Act, in the period between 15 July 2010 and 11 October 2013 (inclusive). The conduct the subject of the CEU involved the withdrawal of client money from trust accounts without the required written authorisations and failing to separate client money in accordance with the relevant provisions.
574. In light of these antecedents and the widespread nature and extended time frame of the admitted contraventions contained in this SOAFAC, ASIC has adopted the view that a civil proceeding is a more appropriate regulatory response in this case than reference to the MDP, so as to act as a greater deterrent.

DATED: 1 March 2021

Nick Kelton

Signed on behalf of the Australian Securities and Investments Commission

Nick Kelton
Litigation Counsel
Chief Legal Office
Australian Securities and Investments Commission

R. McInnes

Signed on behalf of Commonwealth Securities Ltd and Australian Investment Exchange Ltd

Ross McInnes
Partner, Clayton Utz
Legal Representative

[1 March 2021]

Annexure A

CommSec

No	Contravention	Section
Brokerage Issues		
1.	By failing to have in place adequate supervisory procedures to ensure brokerage services were provided to clients efficiently, honestly and fairly in compliance with s912A(1)(a) of the <i>Corporations Act 2001</i> (Cth) from 1 March 2015 until the introduction of enhanced controls between August 2018 and May 2019, CommSec contravened s798H of the <i>Corporations Act</i> by reason of a contravention of rule 2.1.3 of the ASX Rules or the Securities Markets Rules (as applicable during that period).	Section E
Client Money Issues		
2.	<p>By reason of the following client money issues:</p> <ul style="list-style-type: none"> (a) \$1,952.39 Trust Deficiency (b) \$282.53 Trust Deficiency (c) \$615.82 Trust Deficiency (d) \$4,859,286.05 Trust Surplus (e) \$800.27 Trust Surplus (f) \$6,360.92 Trust Surplus (g) \$9,100.05 Trust Surplus (h) Margin relating to house error position (i) \$3,000 Trust Deficiency (j) \$7,792.10 Trust Deficiency (k) Trust Surplus of funds credited to Share Direct <p>CommSec did not perform reconciliations that were accurate in all respects and thereby contravened s798H of the <i>Corporations Act</i> by not complying with rule 3.5.9(c) of the ASX Rules or the Securities Markets Rules (as applicable) on 1,237 occasions in the period between 1 March 2015 and 23 March 2020.</p> <p>Of those:</p>	Section F(II) (items (a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (m)) and Section F(III)

No	Contravention	Section
	<p>(a) 1,021 occasions occurred between 1 March 2015 and 12 March 2019; and</p> <p>(b) 216 occasions occurred between 13 March 2019 and 23 March 2020.</p>	
3.	<p>By failing to notify ASIC within two business days that a trust account reconciliation that was accurate in all respects had not been performed in accordance with r3.5.9 of the ASX Rules or Securities Markets Rules, or that there was a deficiency of funds in its trust account according to a reconciliation performed pursuant to rule 3.5.9, as a result of the following client money issues:</p> <p>(a) \$615.82 Trust Deficiency</p> <p>(b) \$4,859,286.05 Trust Surplus</p> <p>(c) \$800.27 Trust Surplus</p> <p>(d) Failure to notify ASIC of \$37,094 deficiency in trust account</p> <p>(e) \$6,360.92 Trust Surplus</p> <p>(f) \$9,100.05 Trust Surplus</p> <p>(g) Margin relating to house error position</p> <p>(h) Failure to notify ASIC of \$3,898.08 deficiency in trust account,</p> <p>(i) Trust Surplus of funds credited to Share Direct,</p> <p>CommSec contravened s798H of the Corporations Act by not complying with r3.5.10(b) or r3.5.10(d) of the ASX Rules or Securities Market Rules (as applicable) on 9 occasions in the period between 31 May 2018 and 28 November 2019.</p> <p>This occurred on:</p> <p>(a) 6 occasions between 31 May 2018 and 12 March 2019; and</p> <p>(b) 3 occasions between 13 March 2019 and 28 November 2019.</p>	Section F(II) (items (c), (d), (e), (f), (g), (h), (i), (j), (m)) and Section F(III)

No	Contravention	Section
Trade Confirmations Issues		
4.	<p>By failing to send confirmations to customers in respect of market transactions in exchange traded options and equities as a result of:</p> <ul style="list-style-type: none"> (a) the Rebooked Trade Confirmations Issue; and (b) the Equities Trade Confirmations Issue, <p>CommSec contravened s798H of the Corporations Act by not complying with r3.4.1(1) of the ASX Rules or Securities Markets Rules (as applicable) on 1,206 occasions between 1 March 2015 and 6 November 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 1,109 occasions between 1 March 2015 and 12 March 2019; and (b) 97 occasions between 13 March 2019 and 6 November 2019. 	Section G(II) (items (j), (k)) and Section G(III)(a)
5.	<p>By issuing confirmations in respect of market transactions in exchange traded options which were not accurate as a result of:</p> <ul style="list-style-type: none"> (a) the Strike Price Issue; (b) the Contract Size Issue; and (c) the Rebookings Issue, <p>CommSec contravened s798H of the Corporations Act by not complying with r3.4.1(3)(a) of the ASX Rules or Securities Markets Rules (as applicable) on 187,891 occasions between 1 March 2015 and 15 June 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 176,796 occasions between 1 March 2015 and 12 March 2019; and (b) 11,095 occasions between 13 March 2019 and 15 June 2019. 	Section G(II) (items (a), (b), (e)) and section G(III)(a)
6.	By issuing confirmations in respect of market transactions in equities which did not include a statement that the transaction involved a	Section G(II) (item

No	Contravention	Section
	<p>crossing in circumstances where the transaction did involve a crossing as a result of the Equities Crossing Disclosure Issue, CommSec contravened s798H of the Corporations Act by not complying with r3.4.1(3)(f) of the ASX Rules or Securities Market Rules on 17,307 occasions.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 16,624 occasions between 24 April 2017 and 12 March 2019; and (b) 683 occasions between 13 March 2019 and 29 April 2019. 	(i) and Section G(III)(a)
7.	By failing to maintain accurate records in sufficient detail to show particulars in relation to confirmations affected by the Rebookings Issue between 1 March 2015 and 1 December 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of r4.2.1(1)(h) of the ASX Rules or Securities Markets Rules.	Section G(III)(b)
8.	By failing to have in place appropriate supervisory procedures to ensure compliance with rules 3.4.1 and 4.2.1 of the ASX Rules or Securities Markets Rules (as applicable) between 1 March 2015 to October 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of r2.1.3 of the ASX Rules or Securities Markets Rules (as applicable).	Section G(III)(c)
AOP Issue		
9.	By failing to have in place an appropriate automated pre-trade filter to detect possible trades where there would be no change of beneficial owner in relation to the relevant AOP system through which orders from ASB customers were directed between 1 March 2015 and 1 November 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of r5.6.1(a) and a contravention of r5.6.3(1)(a) of the ASX Rules or Securities Markets Rules (as applicable).	Section H
Best Execution Issue		
10.	By failing to comply with its Best Execution Policy Disclosure published on its website as a result of not considering ASX CentrePoint as an execution venue for ASB customers between 1 March 2015 and 26 March 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of rule 3.2.2 of the Exchange Markets Rules.	Section I(I)(a) and Section I(II)

No	Contravention	Section
11.	By stating in its Best Execution Policy Disclosure published on its website that "Execution venues considered by CommSec when executing orders are ASX TradeMatch, ASX CentrePoint and Chi-X Australia" when in fact CommSec did not consider ASX CentrePoint as an execution venue for ASB customers between 1 March 2015 and 26 March 2018, CommSec contravened s12DB(1) of the ASIC Act.	Section I(I)(a) and Section I(III)
12.	By failing to comply with the requirement in its Best Execution Policy and Procedures (being policy and procedures in place to comply with r3.2.1 of the Exchange Markets Rules or r3.9.1 of the Securities Markets Rules, as applicable) to monitor best execution performance on a monthly basis, CommSec contravened s798H of the Corporations Act by reason of a contravention of r3.2.2 of the Exchange Markets Rules or r3.9.2 of the Securities Markets Rules (as applicable) between June 2016 and February 2019.	Section I(I)(b) and Section I(II)
Warrant Agreement Issue		
13.	<p>By failing to provide retail clients with a copy of the explanatory booklet prior to accepting the first order to purchase a warrant or failing to ensure each of those clients had entered into a valid Warrant Agreement Form before entering into orders to purchase a warrant traded on the account in the period 1 March 2015 to 18 June 2020, CommSec contravened s798H of the Corporations Act by not complying with:</p> <p>(a) r3.1.2(3) and r 3.1.8 of the ASX Rules or Securities Markets Rules (as applicable) on 32 occasions, of which:</p> <p>(i) 19 occasions occurred between 1 March 2015 and 12 March 2019; and</p> <p>(ii) 13 occasions occurred between 13 March 2019 and 18 June 2020.</p> <p>(b) r3.1.8 of the ASX Rules or Securities Markets Rules (as applicable) on 376 further occasions, of which:</p> <p>(i) 312 occasions occurred between 1 March 2015 and 12 March 2019; and</p> <p>64 occasions occurred between 13 March 2019 and 18 June 2020.</p>	Section J

No	Contravention	Section
Regulatory Data Issue		
14.	<p>By failing to provide the AFSL number of an intermediary as the Intermediary ID in orders submitted by CommSec to a market operator, CommSec contravened s798H of the Corporations Act by not complying with r5A.2.1(1) of the Exchange Market Rules or r7.4.2 of the Securities Markets Rules on 84,196 occasions between 1 March 2015 and 18 July 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 83,877 occasions between 1 March 2015 and 5 February 2019; and (b) 319 occasions between 18 March 2019 and 18 July 2019. 	Section K(I) and Section K(II)
Section 912A(1)(a)		
15.	<p>By reason of the:</p> <ul style="list-style-type: none"> (a) Brokerage Issues; (b) Client Money Issues (until the implementation of Project Rampart); (c) Trade Confirmation Issues (until the implementation of Project Umbrella); (d) AOP Issues; (e) Best Execution Issues; (f) Warrant Agreement Issues; (g) CommSec findings from the root cause analysis regarding failures in systems, process, and people; <p>in the period 1 March 2015 to 18 June 2020, CommSec did not do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s912A(1)(a) of the Corporations Act.</p>	Section L(I), Section L(II) and Section L(III)

AUSIEX

No	Contravention	Section
Client Money Issues		
1.	<p>By reason of the following client money issues:</p> <ul style="list-style-type: none"> (a) \$333,277.06 Trust Surplus; (b) Margin relating to house error position; (c) Surplus proceeds from options trades; and (d) \$138,690.09 Trust Surplus, <p>AUSIEX did not perform reconciliations that were accurate in all respects and thereby contravened s798H of the Corporations Act by not complying with r3.5.9(c) of the ASX Rules or the Securities Markets Rules (as applicable) on 1,175 occasions in the period between 1 March 2015 and 18 September 2019.</p> <p>Of those:</p> <ul style="list-style-type: none"> (a) 1,043 occasions occurred between 1 March 2015 and 12 March 2019; and (b) 132 occasions occurred between 13 March 2019 and 18 September 2019. 	<p>Section F(IV) (items (a), (b), (c), (d)) and Section F(V)</p>
2.	<p>By failing to notify ASIC within two business days that a trust account reconciliation that was accurate in all respects had not been performed in accordance with r3.5.9 of the ASX Rules or Securities Markets Rules (as applicable), as a result of the following client money issues:</p> <ul style="list-style-type: none"> (a) \$333,277.06 Trust Surplus; (b) Margin relating to house error position; (c) Surplus proceeds from options trades; and (d) \$138,690.09 Trust Surplus, <p>AUSIEX contravened s798H of the Corporations Act by not complying with r3.5.10(b) of the ASX Rules or Securities Market Rules (as applicable) on 4 occasions in the period between 6 June</p>	<p>Section F(IV) (items (a), (b), (c), (d)) and Section F(V)</p>

No	Contravention	Section
	<p>2018 and 23 September 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 1 occasion between 6 June 2018 and 12 March 2019; and (b) 3 occasions between 13 March 2019 and 23 September 2019. 	
Trade Confirmations Issues		
3.	<p>By failing to send confirmations to customers in respect of market transactions in exchange traded options and equities as a result of:</p> <ul style="list-style-type: none"> (a) the Intermediary's Clients Confirmations Issue; (b) the Equities Trade Confirmations Issue; and (c) Rebooked Trade Confirmations Issue, <p>AUSIEX contravened s798H of the Corporations Act by not complying with r3.4.1(1) of the ASX Rules or Securities Market Rules (as applicable) on 3,424 occasions between 1 March 2015 and 27 November 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 2,643 occasions between 1 March 2015 and 12 March 2019; and (b) 781 occasions between 13 March 2019 and 27 November 2019. 	Section G(IV) (items (d), (h), (n)) and Section G(V)
4.	<p>By issuing confirmations in respect of market transactions in exchange traded options which were not accurate in all respects as a result of the Contract Size Issue, AUSIEX contravened s798H of the Corporations Act by not complying with r3.4.1(3)(a) of the ASX Rules or Securities Markets Rules (as applicable) on 18,367 occasions between 9 November 2015 and 15 June 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 16,488 occasions between 9 November 2015 and 12 March 2019; and 	Section G(IV) (item (a)) and Section G(V)

No	Contravention	Section
	(b) 1,879 occasions between 13 March 2019 and 15 June 2019.	
5.	<p>By issuing confirmations in respect of market transactions in equities which did not include a statement that the transaction involved a crossing in circumstances where the transaction did involve a crossing as a result of the Equities Crossing Disclosure Issue, AUSIEX contravened s798H of the Corporations Act by not complying with r3.4.1(3)(f) of the ASX Rules or Securities Market Rules on 297 occasions between 24 April 2017 and 7 May 2019.</p> <p>This occurred on:</p> <p>(a) 287 occasions between 24 April 2017 and 12 March 2019; and</p> <p>(b) 10 occasions between 13 March 2019 and 7 May 2019.</p>	Section G(IV) (item (g)) and Section G(V)
6.	By failing to maintain accurate records in sufficient detail to show particulars in relation to confirmations affected by the Expiry Date Issue between 1 March 2015 and 23 February 2019, AUSIEX contravened s798H of the Corporations Act by reason of a contravention of r4.2.1(1)(h) of the ASX Rules or Securities Markets Rules.	Section G(IV) (item (j)) and Section G(V)
7.	By failing to have in place appropriate supervisory procedures to ensure compliance with r3.4.1 and r4.2.1 of the ASX Rules or Securities Markets Rules (as applicable) between 1 March 2015 to October 2018, AUSIEX contravened s798H of the Corporations Act by reason of a contravention of r2.1.3 of the ASX Rules or Securities Markets Rules (as applicable).	Section G(V)(c)
Best Execution Issue		
8.	By failing to comply with the requirement in its Best Execution Policy and Procedures (being policy and procedures in place to comply with r3.2.1 of the Exchange Markets Rules or r3.9.1 of the Securities Markets Rules, as applicable) to monitor best execution performance on a monthly basis, AUSIEX contravened s798H of the Corporations Act by reason of a contravention of r3.2.2 of the Exchange Markets Rules or r3.9.2 of the Securities Markets Rules (as applicable) between June 2016 and February 2019.	Section I(IV) and Section I(V)

No	Contravention	Section
Regulatory Data Issue		
9.	<p>By failing to provide the AFSL number of an intermediary, or providing the incorrect AFSL number, as the Intermediary ID in orders submitted by AUSIEX to a market operator, AUSIEX contravened s798H of the Corporations Act by not complying with r5A.2.1(1) of the Exchange Market Rules or r7.4.2 of the Securities Markets Rules (as applicable) on 113 occasions between 27 October 2016 and 12 August 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 100 occasions between 27 October 2016 and 12 March 2019; and (b) 13 occasions between 13 March 2019 and 12 August 2019. 	Section K(III) and Section K(IV)
Section 912A(1)(a)		
10.	<p>By reason of the</p> <ul style="list-style-type: none"> (a) Client Money Issues (up until the implementation of Project Rampart); (b) Trade Confirmation Issues (up until the implementation of Project Umbrella); (c) Best Execution Issues; and (d) AUSIEX findings from the root cause analysis regarding failures in systems, process, and people; <p>in the period between 1 March 2015 and February 2019, AUSIEX did not do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s912A(1)(a) of the Corporations Act.</p>	Section L(I), Section L(IV) and Section L(V)

Annexure B

CommSec

No	Contravention	Section	Suggested Penalty
Brokerage Issues			
1.	By failing to have in place adequate supervisory procedures to ensure brokerage services were provided to clients efficiently, honestly and fairly in compliance with s912A(1)(a) of the Corporations Act 2001 (Cth) from 1 March 2015 until the introduction of enhanced controls between August 2018 and May 2019, CommSec contravened s798H of the Corporations Act by reason of a contravention of rule 2.1.3 of the ASX Rules or the Securities Markets Rules (as applicable during that period).	Section E	\$850,000
Client Money Issues			
2.	<p>By reason of the following client money issues:</p> <p>(a) \$1,952.39 Trust Deficiency</p> <p>(b) \$282.53 Trust Deficiency</p> <p>(c) \$615.82 Trust Deficiency</p> <p>(d) \$4,859,286.05 Trust Surplus</p> <p>(e) \$800.27 Trust Surplus</p> <p>(f) \$6,360.92 Trust Surplus</p> <p>(g) \$9,100.05 Trust Surplus</p> <p>(h) Margin relating to house error position</p> <p>(i) \$3,000 Trust Deficiency</p> <p>(j) \$7,792.10 Trust Deficiency</p> <p>(k) Trust Surplus of funds credited to Share Direct</p> <p>CommSec did not perform reconciliations that were accurate in all respects and thereby contravened s798H of the Corporations Act by not complying with rule 3.5.9(c) of the ASX Rules or the Securities Markets Rules (as applicable) on 1,237 occasions in the period between 1 March 2015 and 23 March 2020. Of those:</p> <p>(a) 1,021 occasions occurred between 1 March 2015 and 12 March 2019; and</p> <p>(b) 216 occasions occurred between 13 March 2019 and 23 March 2020.</p>	Section F(II) (items (a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (m)) and Section F(III)	\$5.6m
3.	By failing to notify ASIC within two business days that a trust account reconciliation that was accurate in all respects had not been performed in accordance with r3.5.9 of the ASX Rules or Securities Markets Rules, or that there was a deficiency of funds in its trust account according to a reconciliation performed pursuant to rule	Section F(II) (items (c), (d), (e), (f), (g), (h), (i), (j), (m)) and	\$1.71m

No	Contravention	Section	Suggested Penalty
	<p>3.5.9, as a result of the following client money issues:</p> <p>(a) \$615.82 Trust Deficiency</p> <p>(b) \$4,859,286.05 Trust Surplus</p> <p>(c) \$800.27 Trust Surplus</p> <p>(d) Failure to notify ASIC of \$37,094 deficiency in trust account</p> <p>(e) \$6,360.92 Trust Surplus</p> <p>(f) \$9,100.05 Trust Surplus</p> <p>(g) Margin relating to house error position</p> <p>(h) Failure to notify ASIC of \$3,898.08 deficiency in trust account,</p> <p>(i) Trust Surplus of funds credited to Share Direct,</p> <p>CommSec contravened s798H of the Corporations Act by not complying with r3.5.10(b) or r3.5.10(d) of the ASX Rules or Securities Market Rules (as applicable) on 9 occasions in the period between 31 May 2018 and 28 November 2019. This occurred on:</p> <p>(a) 6 occasions between 31 May 2018 and 12 March 2019; and</p> <p>(b) 3 occasions between 13 March 2019 and 28 November 2019.</p>	Section F(III)	(allocated by course of conduct table taking into account pre/post 13 March 2019)
Trade Confirmations Issues			
4.	<p>By failing to send confirmations to customers in respect of market transactions in exchange traded options and equities as a result of:</p> <p>(a) the Rebooked Trade Confirmations Issue; and</p> <p>(b) the Equities Trade Confirmations Issue,</p> <p>CommSec contravened s798H of the Corporations Act by not complying with r3.4.1(1) of the ASX Rules or Securities Markets Rules (as applicable) on 1,206 occasions between 1 March 2015 and 6 November 2019. This occurred on:</p> <p>(a) 1,109 occasions between 1 March 2015 and 12 March 2019; and</p> <p>(b) 97 occasions between 13 March 2019 and 6 November 2019.</p>	Section G(II) (items (j), (k)) and Section G(III)(a)	<p>\$3.8m</p> <p>(\$1.2m)</p> <p>(\$2.6m)</p>

No	Contravention	Section	Suggested Penalty
5.	<p>By issuing confirmations in respect of market transactions in exchange traded options which were not accurate as a result of:</p> <p>(a) the Strike Price Issue;</p> <p>(b) the Contract Size Issue; and</p> <p>(c) the Rebookings Issue.</p> <p>CommSec contravened s798H of the Corporations Act by not complying with r3.4.1(3)(a) of the ASX Rules or Securities Markets Rules (as applicable) on 187,891 occasions between 1 March 2015 and 15 June 2019. This occurred on:</p> <p>(a) 176,796 occasions between 1 March 2015 and 12 March 2019; and</p> <p>(b) 11,095 occasions between 13 March 2019 and 15 June 2019.</p>	Section G(II) (items (a), (b), (e)) and section G(III)(a)	<p>\$4.2m</p> <p>(\$1.4m)</p> <p>(\$2.8m)</p>
6.	<p>By issuing confirmations in respect of market transactions in equities which did not include a statement that the transaction involved a crossing in circumstances where the transaction did involve a crossing as a result of the Equities Crossing Disclosure Issue, CommSec contravened s798H of the Corporations Act by not complying with r3.4.1(3)(f) of the ASX Rules or Securities Market Rules on 17,307 occasions. This occurred on:</p> <p>(a) 16,624 occasions between 24 April 2017 and 12 March 2019; and</p> <p>(b) 683 occasions between 13 March 2019 and 29 April 2019.</p>	Section G(II) (item (i)) and Section G(III)(a)	<p>\$3m</p> <p>(\$1.2m)</p> <p>(\$1.8m)</p>
7.	<p>By failing to maintain accurate records in sufficient detail to show particulars in relation to confirmations affected by the Rebookings Issue between 1 March 2015 and 1 December 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of r4.2.1(1)(h) of the ASX Rules or Securities Markets Rules.</p>	Section G(III)(b)	\$90,000
8.	<p>By failing to have in place appropriate supervisory procedures to ensure compliance with rules 3.4.1 and 4.2.1 of the ASX Rules or Securities Markets Rules (as applicable) between 1 March 2015 to October 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of r 2.1.3 of the ASX Rules or Securities Markets Rules (as applicable).</p>	Section G(III)(c)	\$800,000
AOP Issue			

No	Contravention	Section	Suggested Penalty
9.	By failing to have in place an appropriate automated pre-trade filter to detect possible trades where there would be no change of beneficial owner in relation to the relevant AOP system through which orders from ASB customers were directed between 1 March 2015 and 1 November 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of r5.6.1(a) and a contravention of r5.6.3(1)(a) of the ASX Rules or Securities Markets Rules (as applicable).	Section H	\$750,000
Best Execution Issue			
10.	By failing to comply with its Best Execution Policy Disclosure published on its website as a result of not considering ASX CentrePoint as an execution venue for ASB customers between 1 March 2015 and 26 March 2018, CommSec contravened s798H of the Corporations Act by reason of a contravention of rule 3.2.2 of the Exchange Markets Rules.	Section I(I)(a) and Section I(II)	\$600,000
11.	By stating in its Best Execution Policy Disclosure published on its website that "Execution venues considered by CommSec when executing orders are ASX TradeMatch, ASX CentrePoint and Chi-X Australia" when in fact CommSec did not consider ASX CentrePoint as an execution venue for ASB customers between 1 March 2015 and 26 March 2018, CommSec contravened s12DB(1) of the ASIC Act.	Section I(I)(a) and Section I(III)	\$1.9m
12.	By failing to comply with the requirement in its Best Execution Policy and Procedures (being policy and procedures in place to comply with r3.2.1 of the Exchange Markets Rules or r3.9.1 of the Securities Markets Rules, as applicable) to monitor best execution performance on a monthly basis, CommSec contravened s798H of the Corporations Act by reason of a contravention of r3.2.2 of the Exchange Markets Rules or r3.9.2 of the Securities Markets Rules (as applicable) between June 2016 and February 2019.	Section I(I)(b) and Section I(II)	\$600,000
Warrant Agreement Issue			
13.	By failing to provide retail clients with a copy of the explanatory booklet prior to accepting the first order to purchase a warrant or failing to ensure each of those clients had entered into a valid Warrant Agreement Form before entering into orders to purchase a warrant traded on the account in the period 1 March 2015 to 18 June 2020, CommSec contravened s798H of the Corporations Act by not complying with: (a) r3.1.2(3) and r 3.1.8 of the ASX Rules or Securities Markets Rules (as applicable) on 32 occasions, of which	Section J	\$3.2m Both contraventions grouped (\$1m for pre 13 March 2019) (\$2.2m for post 13 March

No	Contravention	Section	Suggested Penalty
	<ul style="list-style-type: none"> (i) 19 occasions occurred between 1 March 2015 and 12 March 2019; and (ii) 13 occasions occurred between 13 March 2019 and 18 June 2020 <p>(b) r3.1.8 of the ASX Rules or Securities Markets Rules (as applicable) on 376 further occasions, of which:</p> <ul style="list-style-type: none"> (i) 312 occasions occurred between 1 March 2015 and 12 March 2019; and (ii) 64 occasions occurred between 13 March 2019 and 18 June 2020. 		2019)
Regulatory Data Issue			
14.	<p>By failing to provide the AFSL number of an intermediary as the Intermediary ID in orders submitted by CommSec to a market operator, CommSec contravened s798H of the Corporations Act by not complying with r5A.2.1(1) of the Exchange Market Rules or r7.4.2 of the Securities Markets Rules on 84,196 occasions between 1 March 2015 and 18 July 2019.</p> <p>This occurred on:</p> <ul style="list-style-type: none"> (a) 83,877 occasions between 1 March 2015 and 5 February 2019; and (b) 319 occasions between 18 March 2019 and 18 July 2019. 	Section K(I) and Section K(II)	\$1.5m
Section 912A(1)(a)			
15.	<p>By reason of the:</p> <ul style="list-style-type: none"> (a) Brokerage Issues; (b) Client Money Issues (until the implementation of Project Rampart); (c) Trade Confirmation Issues (until the implementation of Project Umbrella); (d) AOP Issues; (e) Best Execution Issues; (f) Warrant Agreement Issues; 	Section L(I), Section L(II) and Section L(III)	Declaration

No	Contravention	Section	Suggested Penalty
	<p>(g) CommSec findings from the root cause analysis regarding failures in systems, process, and people;</p> <p>in the period 1 March 2015 to 18 June 2020, CommSec did not do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s912A(1)(a) of the Corporations Act.</p>		
	TOTAL		\$28.6m

AUSIEX

No	Contravention	Section	Suggested Penalty
Client Money Issues			
1.	<p>By reason of the following client money issues:</p> <ul style="list-style-type: none"> (a) \$333,277.06 Trust Surplus; (b) Margin relating to house error position; (c) Surplus proceeds from options trades; and (d) \$138,690.09 Trust Surplus, <p>AUSIEX did not perform reconciliations that were accurate in all respects and thereby contravened s798H of the Corporations Act by not complying with r3.5.9(c) of the ASX Rules or the Securities Markets Rules (as applicable) on 1,175 occasions in the period between 1 March 2015 and 18 September 2019.</p> <p>Of those:</p> <ul style="list-style-type: none"> (a) 1,043 occasions occurred between 1 March 2015 and 12 March 2019; and (b) 132 occasions occurred between 13 March 2019 and 18 September 2019. 	<p>Section F(IV) (items (a), (b), (c), (d)) and Section F(V)</p>	<p>\$980,000</p> <p>(allocated by course of conduct table taking into account pre/post 13 March 2019)</p>
2.	<p>By failing to notify ASIC within two business days that a trust account reconciliation that was accurate in all respects had not been performed in accordance with r3.5.9 of the ASX Rules or Securities Markets Rules (as applicable), as a result of the following client money issues:</p> <ul style="list-style-type: none"> (a) \$333,277.06 Trust Surplus; (b) Margin relating to house error position; (c) Surplus proceeds from options trades; and (d) \$138,690.09 Trust Surplus, <p>AUSIEX contravened s798H of the Corporations Act by not complying with r3.5.10(b) of the ASX Rules or Securities Market Rules (as applicable) on 4 occasions in the period between 6 June 2018 and 23 September 2019.</p> <p>This occurred on:</p>	<p>Section F(IV) (items (a), (b), (c), (d)) and Section F(V)</p>	<p>\$850,000</p> <p>(allocated by course of conduct table taking into account pre/post 13 March</p>

No	Contravention	Section	Suggested Penalty
	<p>(a) 1 occasion between 6 June 2018 and 12 March 2019; and</p> <p>(b) 3 occasions between 13 March 2019 and 23 September 2019.</p>		2019)
Trade Confirmations Issues			
3.	<p>By failing to send confirmations to customers in respect of market transactions in exchange traded options and equities as a result of:</p> <p>(a) the Intermediary's Clients Confirmations Issue;</p> <p>(b) the Equities Trade Confirmations Issue; and</p> <p>(c) Rebooked Trade Confirmations Issue,</p> <p>AUSIEX contravened s798H of the Corporations Act by not complying with r3.4.1(1) of the ASX Rules or Securities Market Rules (as applicable) on 3,424 occasions between 1 March 2015 and 27 November 2019.</p> <p>This occurred on:</p> <p>(a) 2,643 occasions between 1 March 2015 and 12 March 2019; and</p> <p>(b) 781 occasions between 13 March 2019 and 27 November 2019.</p>	Section G(IV) (items (d), (h), (n)) and Section G(V)	<p>\$2.6m</p> <p>(\$1.1m)</p> <p>(\$1.5m)</p>
4.	<p>By issuing confirmations in respect of market transactions in exchange traded options which were not accurate in all respects as a result of the Contract Size Issue, AUSIEX contravened s798H of the Corporations Act by not complying with r3.4.1(3)(a) of the ASX Rules or Securities Markets Rules (as applicable) on 18,367 occasions between 9 November 2015 and 15 June 2019.</p> <p>This occurred on:</p> <p>(a) 16,488 occasions between 9 November 2015 and 12 March 2019; and</p> <p>(b) 1,879 occasions between 13 March 2019 and 15 June 2019.</p>	Section G(IV) (item (a)) and Section G(V)	<p>\$2.3m</p> <p>(\$900,000)</p> <p>(\$1.4m)</p>
5.	<p>By issuing confirmations in respect of market transactions in equities which did not include a statement that the transaction involved a crossing in circumstances where the transaction did involve a crossing as a result of the Equities Crossing Disclosure Issue, AUSIEX contravened s798H of the Corporations Act by not complying with r3.4.1(3)(f) of the ASX Rules or Securities Market Rules on 297 occasions between 24 April 2017 and 7 May 2019.</p>	Section G(IV) (item (g)) and Section G(V)	\$1.56m

No	Contravention	Section	Suggested Penalty
	<p>This occurred on:</p> <p>(a) 287 occasions between 24 April 2017 and 12 March 2019; and</p> <p>(b) 10 occasions between 13 March 2019 and 7 May 2019.</p>		<p>(\$660,000)</p> <p>(\$900,000)</p>
6.	By failing to maintain accurate records in sufficient detail to show particulars in relation to confirmations affected by the Expiry Date Issue between 1 March 2015 and 23 February 2019, AUSIEX contravened s798H of the Corporations Act by reason of a contravention of r4.2.1(1)(h) of the ASX Rules or Securities Markets Rules.	Section G(IV) (item (j)) and Section G(V)	\$80,000
7.	By failing to have in place appropriate supervisory procedures to ensure compliance with r3.4.1 and r4.2.1 of the ASX Rules or Securities Markets Rules (as applicable) between 1 March 2015 to October 2018, AUSIEX contravened s798H of the Corporations Act by reason of a contravention of r2.1.3 of the ASX Rules or Securities Markets Rules (as applicable).	Section G(V)(c)	\$500,000
Best Execution Issue			
8.	By failing to comply with the requirement in its Best Execution Policy and Procedures (being policy and procedures in place to comply with r3.2.1 of the Exchange Markets Rules or r3.9.1 of the Securities Markets Rules, as applicable) to monitor best execution performance on a monthly basis, AUSIEX contravened s798H of the Corporations Act by reason of a contravention of r3.2.2 of the Exchange Markets Rules or r3.9.2 of the Securities Markets Rules (as applicable) between June 2016 and February 2019.	Section I(IV) and Section I(V)	\$450,000
Regulatory Data Issue			
9.	<p>By failing to provide the AFSL number of an intermediary, or providing the incorrect AFSL number, as the Intermediary ID in orders submitted by AUSIEX to a market operator, AUSIEX contravened s798H of the Corporations Act by not complying with r5A.2.1(1) of the Exchange Market Rules or r7.4.2 of the Securities Markets Rules (as applicable) on 113 occasions between 27 October 2016 and 12 August 2019.</p> <p>This occurred on:</p> <p>(a) 100 occasions between 27 October 2016 and 12 March 2019; and</p> <p>(b) 13 occasions between 13 March 2019 and 12 August 2019.</p>	Section K(III) and Section K(IV)	<p>\$850,000</p> <p>(\$250,000)</p> <p>(\$600,000)</p>
Section 912A(1)(a)			

No	Contravention	Section	Suggested Penalty
10.	<p>By reason of the</p> <p>(a) Client Money Issues (up until the implementation of Project Rampart);</p> <p>(b) Trade Confirmation Issues (up until the implementation of Project Umbrella);</p> <p>(c) Best Execution Issues; and</p> <p>(d) AUSIEX findings from the root cause analysis regarding failures in systems, process, and people;</p> <p>in the period between 1 March 2015 and February 2019, AUSIEX did not do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s912A(1)(a) of the Corporations Act.</p>	Section L(I), Section L(IV) and Section L(V)	Declaration
	TOTAL		\$10.17m