Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division: TAXATION AND COMMERCIAL DIVISION

File Number(s): **2019/2157**

Re: **Keith Bowker**

APPLICANT

And **Australian Securities and Investments Commission**

RESPONDENT

DECISION

Tribunal: **Deputy President Bernard J McCabe**
Senior Member Dr M Evans-Bonner

Date: **6 March 2020**

Place: **Perth**

The Tribunal varies the Banning Order Decision dated 2 April 2019 so that the applicant is prohibited from providing financial services for a period of two years under s 920A(1)(e) and s 920B(2) of the *Corporations Act 2001* (Cth).

………………[SGD]…………………………………..

Deputy President Bernard J McCabe

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CATCHWORDS

CORPORATIONS – banning order – financial services – decision by Australian Securities and Investments Commission to make banning order prohibiting applicant from providing financial services for 6 years – where the applicant does not otherwise provide financial services – whether ASX minimum spread requirement to qualify for the ASX Official List obtained by artificial means – whether applicant failed to comply with a financial services law – whether applicant engaged in conduct that was misleading or deceptive or was likely to mislead or deceive in relation to a financial product – whether power to make a banning order enlivened – whether banning order should be made – duration of banning order – reviewable decision varied to reduce the banning period to two years

LEGISLATION

Australian Securities and Investments Commission Act 2001 (Cth) – s 1(2)
Corporations Act 2001 (Cth) – ss 760A, 761A, 920A, 920A(1), 920A(1)(da), 920A(1)(e), 920A(1)(f), 920B, 920C, 961B, 961B(1), 961B(2), 961G, 1041A
Trade Practices Act 1974 (Cth) – s 52

CASES

Australian Securities and Investments Commission v Narain (2008) 169 FCR 211
Australian Securities and Investments Commission v Stone Assets Management Pty Ltd (2012) 205 FCR 120
Davidof and Australian Securities & Investments Commission [2017] AATA 2594
Director of Public Prosecutions for the Commonwealth of Australia v JM (2013) 250 CLR 135
Drake v Minister for Immigration and Ethnic Affairs (1979) 24 ALR 577
Drake v Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634
Faulkner and Comcare (2007) 45 AAR 467
Hornsby Building Information Centre Pty Ltd and Another v Sydney Building Information Centre Ltd [1978] 140 CLR 216
Makita (Australia) Pty Ltd v Sprowles (2001) 52 NSWLR 705
North and Others v Marra Developments (1981) 148 CLR 42
Panganiban v Australian Securities and Investments Commission (2016) 338 ALR 119

Re HIH Insurance Ltd (in prov liq) and HIH Casualty and General Insurance Ltd (in prov liq); Australian Securities & Investments Commission v Adler and Others [2002] NSWSC 483

Rich & Anor v Australian Securities and Investments Commission (2004) 220 CLR 129

Shi v Migration Agents Registration Authority (2008) 235 CLR 286

Tarrant and Australian Securities and Investments Commission (2013) 62 AAR 192

SECONDARY MATERIALS

Australian Securities & Investments Commission Regulatory Guide 98: ASIC's powers to suspend, cancel and vary AFS licences and make banning orders (September 2018)

REASONS FOR DECISION

Deputy President Bernard J McCabe
Senior Member Dr M Evans-Bonner

6 March 2020

INTRODUCTION

1. Mr Keith Bowker, an accountant who is the applicant in this matter, was approached by a business contact working in a stock broking firm for help in securing the names of a number of small investors in two IPOs, Skin Elements Limited (Skin Elements) and Roto-Gro International Limited (Roto-Gro). An "*IPO*" is an initial public offering – the process by which a private company is listed on the stock exchange. The stock broker needed the investors' names to comply with an Australian Stock Exchange (ASX) listing rule requiring that the IPO have a minimum number of investors before its listing would be approved (sometimes referred to as the "*minimum spread requirement*").

2. The applicant – who was not a stock broker and had never worked in financial services – quickly provided a list of names drawn from his family, his accounting firm's staff and from amongst his clients. But there was a problem: at least some of the names provided belonged to people who were not genuine investors. Those individuals either did not appreciate their names were being used to subscribe for shares, or expressly agreed they

would allow their names to be used as a formality but not so as to create any obligation to pay for or hold shares.

3. The Australian Securities and Investments Commission (ASIC) says the ASX was led into error by the applicant's conduct. In those circumstances, ASIC says the applicant engaged in misleading or deceptive conduct in contravention of s 1041H of the *Corporations Act 2001* (Cth) (the Act). Section 1041H is a financial services law and ASIC also found the applicant was likely to contravene financial services laws in the future. On 2 April 2019, following a hearing, a delegate of ASIC decided the applicant should be banned from providing financial services for a period of six years pursuant to ss 920A and 920B of the Act. This will be referred to as the Banning Order Decision, and it is this decision that the applicant has asked this Tribunal to review.

4. This case is unusual in at least two respects. First, the applicant was not in the business of providing financial services and – at least on his evidence – he is unlikely to be engaged in that business in the foreseeable future. If the applicant is right, there must be some question over ASIC's contention that he is likely to contravene a financial services law in the future. There is also a more fundamental question over the utility of a banning order in those circumstances.

5. Second, the applicant is accused of misleading the ASX, with whom he had no relationship. He denies he did anything wrong, points out nobody was hurt and insists all of the investors were sophisticated individuals who knew what was going on. He notes the names were provided to the stockbroker, not the ASX, even though the applicant knew the stockbroker would use the names the applicant provided for the purposes of dealing with the ASX.

6. We have concluded the applicant did engage in misleading or deceptive conduct within the meaning of s 1041H in relation to financial services when he provided the names because we are satisfied at least some of the named individuals were not genuine investors. Their names were put up by the applicant so they could be used to artificially satisfy the minimum spread requirements. The applicant knew the names were to be provided to the ASX to satisfy that organisation about compliance with its listing rules. It did not matter that he had no direct relationship with the ASX because the conduct was still in relation to the shares and the IPOs.

7. We are not satisfied the evidence establishes ASIC has reason to believe the applicant is likely to contravene financial services laws in the future. He was only incidentally involved in the provision of financial services when practicing as an accountant. Even assuming he can return to that occupation and did not learn his lesson, he is unlikely to have significant opportunities to contravene financial services laws in the foreseeable future.

8. We discuss the evidence and our findings below. We also explain why we say the power to impose a banning order is enlivened, and why a banning order is appropriate in this case – albeit that we are satisfied the duration of the banning order should be reduced in light of our factual findings.

The applicant's accounting background

9. At the time the conduct in question occurred, Mr Bowker was a director of Somerville Accountants Pty Ltd,[1] which traded as Somerville Advisory Group. Mr Bowker was in the business of providing accounting and company secretarial services. Mr Bowker, Somerville Advisory Group, and Somerville Accountants Pty Ltd have never held an Australian financial services license (AFSL). An AFSL is a licence issued under s 913B of the Act to carry on a financial services business.

10. ASIC does not allege Mr Bowker or his firm were in the business of providing financial services. But it is clear many of his business clients were consumers of financial services provided by third parties.

11. Mr Bowker contends there is something odd about a decision that bans him from providing financial services in circumstances where he was not in the business of providing them in the first place. He goes on to insist in his evidence that he does not intend to provide any financial services in the future. ASIC says there is nothing odd about the Banning Order Decision, and questions Mr Bowker's evidence about his future intentions.

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[1] Exhibit 1, T3.1, p 71; T3.9, p 195.

The ASX listing rules

12. It would be helpful to preface our discussion of the facts by first canvassing the ASX listing rules. The listing rules govern the listing of companies on the stock exchange conducted by the ASX. ASX Listing Rule 1.1 is of particular relevance here. It sets out certain conditions which must be met before an entity can be admitted to the ASX Official List – an essential step in the IPOs for Skin Elements and Roto-Gro.

13. The ASX Listing Rule applied by the ASX with respect to the Skin Elements IPO was Listing Rule 1.1, condition 7.[2] The rule has since been revised but at the time condition 7 of the rule required that in an IPO there must be at least:

    (a) 400 security holders, each having a parcel of the main class of securities with a value of at least $2,000, subject to certain conditions;

    (b) 350 security holders, each having a parcel of the main class of securities with a value of at least $2,000, of which at least 25% must be unrelated; or

    (c) 300 security holders, each having a parcel of the main class of securities with a value of at least $2,000, of which at least 50% must be unrelated.

14. The ASX Listing Rule which was applied by the ASX with respect to the Roto-Gro IPO was ASX Listing Rule 1.1, condition 8.[3] It provides, in summary, that there must be at least 300 unaffiliated security holders, each of whom holds a parcel of the main class of securities with a value of at least $2,000.

15. Conditions 7 and 8 of the listing rules both note that "*[t]he condition is not met if spread is obtained by artificial means*."

16. ASIC has also published Guidance Notes that were updated on 7 September 2015 and 19 December 2016 "to *assist listed entities to understand and comply with their obligations under the Listing Rules*".[4] These Guidance Notes applied to both the Skin Elements IPO[5]

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[2] Exhibit 1, T.3.3, p 81.

[3] ASIC's Statement of Facts, Issues and Contentions, Annexure A.

[4] Exhibit 3, p 203.

[5] Exhibit 3, p 240.

and the Roto-Gro IPO.[6] The Guidance Notes explain the ASX has the discretion to accept or reject the admission of an entity to the Official List. The ASX does not need to give reasons for its decision and can impose any conditions it considers appropriate.

17. Guidance Note 1 also provide examples of what constitutes "*artificial means*" including, inter alia:

    (a) having investors enter into purchase agreements or call options that allow a third party to acquire their securities after listing;

    (b) having investors enter into repurchase agreements or put options that allow them to dispose of their securities to a third party after listing;

    (c) brokers, financial advisors or other intermediaries completing applications for clients without their knowledge or consent.

18. While the Guidance Notes do not define the concept of a genuine investor, the examples cited above make clear that a company will fall foul of the "*artificial spread*" rules if the investors who are proffered are not genuine investors – that is, individuals who are not bona fide purchasers of the securities who intend on taking on the obligations of ownership. An individual who does not intend to take on those obligations, or who is not aware that his or name is being used, cannot be a genuine investor, and their name cannot be used to satisfy the artificial spread requirement.

19. At the hearing Mr Bowker initially argued he provided the names to the stockbroker as a favour. He pointed out he did not provide them to the ASX directly.[7] He later conceded he knew the lists of investors would ultimately be supplied to the ASX to establish the companies met the minimum spread requirement.[8] It is unclear whether he had a detailed understanding of the ASX listing rules, but that is ultimately irrelevant in circumstances where he knew the names were being sought so they could be given to the ASX. He said he believed this was not misleading as the names on the lists were all genuine investors.

[6] Exhibit 3, pp 270-271.
[7] Transcript, p 22-23.
[8] Transcript, p 81-82.

THE INDIVIDUAL REQUESTS AND HOW THEY WERE FULFILLED

Skin Elements IPO

20. We turn to the Skin Elements IPO. On 8 November 2016, Mr Bowker was contacted by a broker, Mr Terry Gardiner, from the stock broking firm Barclay Wells.[9] Barclay Wells was one of several brokers engaged by Skin Elements to assist in obtaining shareholders and in capital raising for the Skin Elements IPO.[10]

21. Mr Bowker had a prior business relationship with Barclay Wells and Mr Gardiner.[11] Mr Bowker stated in an ASIC interview that "…*they help me out on raising money for different companies, and I've got a close relationship with Terry*".[12]

22. When interviewed by ASIC on 31 August 2017, Mr Gardiner explained he needed to find 50 names to meet the minimum spread requirement so the company could be listed. He decided to call on Mr Bowker for assistance in this endeavour as the two men had an existing relationship. Mr Gardiner said he asked Mr Bowker to find 25 names to meet the requirement in the listing rules.[13] Mr Gardiner sent the following email to Mr Bowker at 11.32am on 8 November 2016, titled "*investment opportunity: skin elements limited IPO ASX Listing (ASX:SKN)"* which stated:[14]

> *Could you do 25-30 names at $2k each please. Its [sic] closing today so we will be trading very quickly and can sell them out.*
>
> *This will be a huge favour mate.*
>
> *I have a little present for you.*

23. In his SFIC, Mr Bowker stated the reference to the "*present*" was likely "*a bottle of wine/scotch or a lunch*".[15] He also noted the reference to "*trading very quickly*" would have related to the broker's own clients and not the investors on the list provided by the applicant.

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[9] Exhibit 1, T3.106, p 670.
[10] Exhibit 1, T3.180, p 821.
[11] Exhibit 1, T3.18, p 316.
[12] Exhibit 1, T3.18, p 322; see also p 437.
[13] Exhibit 3, p 148.
[14] Exhibit 1, T3.166, p 670.
[15] Exhibit 2, p 10 at [14].

24. At 1:03pm on 8 November 2016, the applicant sent an email in reply which stated "*I will send you 25 names in next hour or so*".[16]

25. Mr Bowker's SFIC included a list of the 25 investors. In summary, the breakdown of investors comprised:[17]

(a) five investors being Mr Bowker, his wife, their investment trust, and two companies of which Mr Bowker was a director, trustee, and/or company secretary;

(b) six investors identified after a phone call to a Mr Chng, a client of Mr Bowker, including two companies of which Mr Bowker was a director and/or company secretary;

(c) 12 investors drawn from the staff in Mr Bowker's office which included Mr Bowker's sister-in-law and her husband;

(d) a company identified after a phone call to a Mr Ivanoff; and

(e) a company (of which Mr Bowker was company secretary) identified in a phone call to a Mr Evans.

26. After listing the 25 investors whose names he provided towards satisfying the minimum spread requirements for the Skin Elements IPO, Mr Bowker stated:[18]

> *As illustrated above three phone calls and a walk around the office is how the Applicant can legitimately obtain 25 investors in a very short period of time.*
>
> *All the investors consented to the investment and the Applicant has no reason to doubt that the investors invested as per any other investor that took up the Skin Elements IPO and therefore their involvement didn't deceive, mislead, manipulate or disadvantage the market or the investment public.*

27. ASIC commenced a formal investigation into suspected contraventions by the applicant of s 1041H of the Act with respect to the Skin Elements IPO for the period 8 November 2016 to 26 April 2017.[19]

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[16] Exhibit 1, T3.166, p 670.
[17] Exhibit 2, p 11.
[18] Exhibit 2, p 12.
[19] Exhibit 3, at [5].

28. As part of its investigation, ASIC interviewed a number of the Skin Elements shareholders, but not all of them. ASIC concluded it did not need to contact all of the shareholders. We accept a more extensive investigation would have been difficult given the only contact details recorded in the application forms of some shareholders were those of Mr Bowker's firm, Somerville Advisory Group.[20]

29. In a statement dated 26 October 2017, Mr Chng described his conversation with Mr Bowker in relation to the Skin Elements IPO as one in which Mr Bowker asked for names to help with the spread requirement for the IPO of a company. After communicating to Mr Bowker that he did not want to put any money into the company, he provided his name, along with the name of his wife and two companies. Mr Bowker then organised the funding himself. Mr Chng made it clear in his statement that he had no intention of making a profit on the transaction and was only getting involved to help with the spread of names.

30. Following an interview with ASIC, Ms Amry, one of the employees of Somerville Advisory Group, provided a statement dated 25 October 2017.[21] She said in her statement that she did not pay any money and did not want to be a shareholder of Skin Elements. She recalled being assured by either Mr Bekarma (who was second in charge to Mr Bowker at Somerville Advisory Group and reported directly to him) or Mr Bowker that she would not have to pay any money; they just needed her name. She gave a photocopy of her identification to the applicant for this purpose.

31. Following an interview with ASIC, Mr Gill, another employee from Somerville Advisory Group, provided a statement dated 24 October 2017.[22] He said he agreed in a conversation with Mr Bowker that he would participate in the IPO of Skin Elements. He claimed he was told it would cost $2,000. He said he was never asked to pay for the shares, but gave a copy of his identification to Mr Bekarma. Mr Gill did not receive any shareholder statement and did not know he had been allocated shares until he was asked by Mr Bekarma to fill out forms for the transfer back of the shares. He disputed the

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[20] Exhibit 3, at [10].

[21] Exhibit 1, T3.13, p 238.

[22] Exhibit 1, T3.15, pp 247-249

accuracy of the Holding Information as at 16 August 2017. He denied having seen the document before.

32. Ms Lo, another employee from Somerville Advisory Group, was also interviewed by ASIC. Following the interview, Ms Lo provided a statement dated 25 October 2017.[23] She said she was approached by Mr Bekarma or Mr Bowker for names to purchase shares in Skin Elements, although she was not aware it was for an IPO. She provided her own name and the name of her sister along with their identification. She said while she knew their names would be used to purchase shares, she did not sign any forms and paid no money. She understood they would not be required to hold the shares, and recalled completing transfer forms to transfer the shares out of her name.

33. Mr Baath was a friend of Mr Gill's. He also provided a statement, which was dated 25 October 2017.[24] He said he had considered buying the shares but never received any paperwork. After his circumstances changed, he did not follow up on the purchase. He did not complete any forms, pay any money or receive any documentation for the company. He was unaware he had held shares in Skin Elements until shown documentation by ASIC. When shown a completed transfer form, he said the signature on the document was not his. He said he had not authorised anyone to sign the document on his behalf.

34. In an interview with ASIC, Mr Bowker's sister-in-law, Mrs Indrans, said Mr Bowker had spoken with her about purchasing the Skin Elements shares. She recalled she did not have any money, so she agreed with Mr Bowker that he would finance the purchase, and they could sort out repayments when the shares were sold.[25] She added that she recalled signing the contract to acquire the shares and providing her passport as identification, but was later notified they had been sold and there was no profit.[26]

35. On approximately 8 November 2016, Mr Bowker paid the total amount due to subscribe for the shares for all of the applications by way of a funds transfer into the Barclay Wells bank account in the sum of $50,000. He obtained the $50,000 by way of a loan from Caeneus Minerals Limited, an ASX listed company of which he was the chairman and

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[23] Exhibit 1, T3.16, pp 253-255.
[24] Exhibit 1, T3.14, pp 244-246.
[25] Exhibit 1, T3.17, pp 263-264, 270.
[26] Exhibit 1, T3.17, pp 266-277.

secretary.[27] In an interview with ASIC officers on 30 August 2017, Mr Bowker stated that "*Because the timing was so close to the IPO, I paid the 50,000 instead of the individual shareholders…*".[28]

36. On 3 January 2017, the ASX determined Skin Elements satisfied the minimum spread requirements applicable at that time, being Listing Rule 1.1, condition 7(b). The relevant file note[29] stated, among other things:

    - *The final register includes 352 shareholders who hold parcels of shares with a value of at least 2000, excluding related parties and restricted holdings.*

    …

    - *Accordingly, the Company satisfies listing rule 1.1 condition 7(b) of the spread requirement.*

37. On 23 December 2016, each of the Skin Elements investors was issued with 10,000 shares and 2,000 options.[30]

38. A month later, on 23 January 2017, all of the Skin Elements investors on the list provided by Mr Bowker sold their individual parcels of shares to Mr Bowker and his wife. The purchase price was $2,000 for each parcel of shares.[31] In other words, the shares were bought by Mr Bowker and his wife for the same price at which they had been acquired at the time of the IPO.

39. In an interview with ASIC on 30 August 2017, Mr Bowker stated he had offered to buy back the shares so his staff and clients would not lose money because the share price had fallen.[32] He said he was not willing to allow them to make a loss as the investment was done "*as a favour to Barclay Wells*".

40. In this interview, Mr Bowker stated he did not obtain any benefit for providing the names.[33] He explained to ASIC that he did not receive any cash benefit from the broker or Skin

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[27] Respondent's Statement of Facts, Issues and Contentions, Attachment C.
[28] Exhibit 1, T3.18, p 318.
[29] Exhibit 1, T3.185, p 851.
[30] Exhibit 1, T3.21-T3.70.
[31] Exhibit 1, T3.71-T3.120.
[32] Exhibit 1, T3.18, p 318.
[33] Exhibit 1, T3.18, p 318.

Elements in return for his assistance. He was doing the broker a favour, as business associates occasionally do, in order to generate goodwill – goodwill that might result in the referral of clients in the future, or other business opportunities. He stressed that none of the signatures were obtained by fraudulent means, including the signature on Mr Baath's transfer form.

Roto-Gro IPO

41. In January 2017, Mr Gardiner approached Mr Bowker about an IPO for Roto-Gro.[34]

42. On 11 January 2017 at 9.15am, Mr Gardiner sent the following email, titled "*Roto-Gro International Limited (ASX: RGI) *** CLOSING THIS WEEK"* to Mr Bowker and Mr Bekarma:[35]

> *Hi Keith*
> *Thanks for the 20 names @2500 each for $50k.*
> *This will go well mate.*
> *I will send the 'love' to come your way.*
> *Please send $50k and apps asap.*
> *Barclay Wells Ltd Trust account*
> *BSB: …*
> *ACC: …*

43. Mr Bowker revealed in oral evidence that Mr Gardiner's reference to "*love*" was a reference to client referrals.[36] He explained that in exchange for helping out with this request, the broker would refer a client to his accounting business.

44. On 12 January 2017 at 11:07am, Mr Gardiner sent Mr Bowker and Mr Bekarma an email which stated:[37]

> *Mate*
> *How are you going with the RGI 20 names for $50k?*
> *Cheers*

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[34] Exhibit 1, T3.20, p 439.
[35] Exhibit 1, T3.171, p 680.
[36] Transcript, p 80.
[37] Exhibit 1, T3.121, p 588.

45. On 12 January 2017 at 11:11am, Mr Bekarma sent an email to Mr Gardiner and Mr Bowker, stating "*The names are ready, we will send $50k shortly*".[38]

46. On 12 January 2017 at 12:51pm, Mr Bowker sent Mr Gardiner an email attaching the completed application forms and a list with the names and details of 20 investors in Roto-Gro. Mr Bowker stated in this email that he would forward the funds that day.[39]

47. Each application form was completed in consideration of 12,500 Roto-Gro shares at a price of 20 cents, being a total value of $2,500 for each investor.[40]

48. The investors included Mr Bowker, his wife, the Bowker Investment Account, Mr Bekarma, Mr Gill, Ms Amry, Mrs Indrans and Ms Lo.[41]

49. The investors on the list provided by Mr Bowker did not pay anything for the shares. As with the Skin Elements IPO, Mr Bowker borrowed a further $50,000 from Canaeus Minerals Limited to pay for all of the applications to subscribe to the Roto-Gro IPO.[42]

50. On 1 February 2017, the ASX confirmed Roto-Gro would be admitted to the Official List subject to complying with specified conditions in Listing Rule 1.1. It relevantly noted:[43]

- there were at least 350 shareholders, each having a parcel of shares with a value of at least $2000 (at 1.3.1); and
- at least 25% of the Company's ordinary shares were not held by related parties, excluding restricted securities (at 1.3.2).

51. On 6 February 2017, Roto-Gro's lawyers, Mills Oakley, wrote to the ASX stating that Roto-Gro's share register showed there were at least 350 shareholders, each having a parcel of shares with a value of at least $2,000, and at least 25% of its ordinary shares were not held by related parties in each case excluding restricted securities.[44]

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[38] Exhibit 1, T3.121, p 612.
[39] Exhibit 1, T3.121, p 587.
[40] Exhibit 1, T3.121, pp 591-610.
[41] Exhibit 1, T3.121, pp 597, 601-608.
[42] Exhibit 1, T3.20, p 445.
[43] Exhibit 1, T3.173, pp 744-755.
[44] Exhibit 1, T3.188, p 879.

On the same date, Mills Oakley separately sent Roto-Gro's final shareholder register list to the ASX.[45]

52. On 7 February 2017, ASX sent Mills Oakley an email confirming that all conditions for the admission of Roto-Gro to the Official List had been met, and that it would be admitted to the ASX Official List the following day.[46] On 8 February 2017, Roto-Gro was admitted to the ASX Official List.[47]

53. As with Skin Elements, not all of the 20 Roto-Gro investors were interviewed by ASIC. This was an internal administrative decision made by ASIC. As with the Skin Elements investigation, there were some investors whose only contact details on their application forms were those of Somerville Advisory Group.[48] ASIC said that made it difficult to contact those individuals, but that a representative sample of investors was contacted.

54. In his statement provided to ASIC in relation to the Roto-Gro IPO, Mr Gill said he recalled seeing an email from Mr Bowker which attached a schedule that included his name in a list of holder names but did not know which company the list related to.[49] He stated he was unaware he was recorded as a holder of shares in Roto-Gro when he was shown a document titled "*Holding Information as at 07/09/2017*" that recorded his shareholding. He confirmed he had never applied for shares in the company.

55. In her statement, Ms Amry said she was not aware she was a shareholder in Roto-Gro until she was asked to prepare a transfer form at the request of Mr Bekarma or Mr Bowker.[50]

56. Mrs Indrans stated in her interview with ASIC that she and her husband purchased shares in Skin Elements. She said she had not previously bought any shares.[51] Further, at the time of her interview with ASIC on 12 September 2017, Mrs Indrans stated she had not

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[45] Exhibit 1, T3.176, p 799; T3.177, p 806.
[46] Exhibit 1, T3.175, p 797.
[47] Exhibit 1, T3.8, pp 181 and 185.
[48] Exhibit 3, at [10].
[49] Exhibit 1, T3.15, p 250.
[50] Exhibit 1, T3.13, pp 242-243.
[51] Exhibit 1, T3.17, p 275.

bought shares in any other company, which is suggestive that she did not have any knowledge that she had acquired or sold any Roto-Gro shares.

57. Within 18 days of being issued all of the Roto-Gro investors, including Mr Gill, Ms Amry and Mrs Indrans, were issued parcels of 12,500 shares in the Roto-Gro IPO on 6 February 2017. On 24 February 2017, all of the investors sold their shares to Mr Bowker and his wife on behalf of the Bowker Investment Account for the same price as the initial purchase price, being $2,500.[52] Thus, as with the Skin Elements shares, the Bowker Investment Account purchased shares it already owned, and which Mr Bowker and his wife separately owned in their own names, as part of this off-market transfer.[53]

58. In an interview with ASIC on 30 August 2017, Mr Bowker had difficulty recalling why he had offered to buy back the Roto-Gro shares,[54] noting he was not sure whether the share price had fallen. He surmised the shareholders may have contacted him to say they no longer wanted to hold the shares. This is difficult to reconcile with the evidence of the shareholders who were not even aware of their holdings until the point at which they were asked by Mr Bowker to transfer back the shares.

Mr Bowker's evidence regarding the statements of investors

59. At the hearing, Mr Bowker was given the opportunity to comment on the statements of each of the investors that were given to ASIC.

60. Mr Bowker insisted each investor was a genuine investor because they had provided their identification. He argued they would not have done so if they were not genuine investors and were not aware of what they were doing. He pointed out one investor had also referred the investment opportunity to another person which would not have happened if he was not aware of the transaction.

61. Mr Bowker noted at the hearing that Mr Chng was a sophisticated investor.[55] Despite the clear indication that Mr Chng would not contribute financially to the shareholding and was

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[52] Exhibit 1, T3.144 pp 643 - T3.164 p 664; T3.122 p 621 – T3.143, p 642.

[53] Exhibit 1, T3.135, p 634; T3.128, p 627; T3.127; p 626.

[54] Exhibit 1, T3.20, p 463.

[55] Transcript, p 52.

only participating as a favour to Mr Bowker, Mr Bowker insisted Mr Chng was still a genuine investor because he knew he was applying for shares and had provided identification in connection with the purchase. Mr Bowker disagreed with Mr Chng's evidence that Mr Bowker had said "*[l]ook, I need to some spread, can you assist by providing names to help with the spread?".* Mr Bowker did concede that Mr Bekarma may have said there was an investment that needed to be filled quickly.

62. With respect to Ms Amry, Mr Bowker also commented that, as a chartered accountant, she would have helped Mr Bekarma in the preparation of spreadsheets relating to the IPO.[56] By providing her identification, he argues she must surely have known she was investing, and that she would not have provided identification if she did not want to be an investor.

63. Mr Bowker also pointed out Mr Gill was a qualified accountant. In those circumstances, Mr Bowker said he "*must be able to assume that these people are willing investors in these instances*".[57]

64. Commenting on Ms Lo's statement, Mr Bowker noted she introduced her sister to the investment and would not have done so if she was not aware of what the transaction was.[58] He agreed he took the absence of any objection from them as evidence of their agreement to an actual investment.

65. With respect to Mr Baath's statement, Mr Bowker noted that he had been introduced to the investment by Mr Gill, had spent time researching the prospectus online on his own volition, and was an apparently willing investor in an investment opportunity.[59] Mr Bowker commented that Mr Gill had provided identification, so he must be a willing investor. Mr Bowker suggested the holding statements were sent to a previous address which would account for Mr Gill and Mr Baath not receiving their holding statements. Mr Bowker was unable to explain how the transfer form was filled out without Mr Baath's knowledge.

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[56] Transcript, p 60.
[57] Transcript, p 64.
[58] Transcript, pp 67-68.
[59] Transcript, p 70.

66. Regarding Mrs Indrans, Mr Bowker commented that he did not see the difference between her and other investors.[60] Any help he provided her was with her full knowledge and for her benefit as a willing shareholder. He says again that as she had to provide identification, which is recorded on the file, that demonstrated she was properly aware of the transaction and agreed to it being carried out.

FACTUAL FINDINGS

67. We are satisfied Mr Bowker knew he was providing the names of investors to help meet the minimum spread requirements in the ASX listing rules so that the companies could be admitted to the ASX Official List. That much is clear from his own evidence and from the evidence provided to ASIC by Mr Gardiner. We do not understand there to be any dispute on this issue.

68. We are also satisfied Mr Bowker obtained the names of the investors to supply to Barclay Wells within a relatively short amount of time. For the Skin Elements IPO, the evidence suggests he compiled the list of names on the same day, within a matter of hours. The timing required by Mr Bowker to compile the Roto-Gro list is less clear. We note Mr Bowker was approached by Mr Gardiner in early January, Mr Gardiner followed him up by email on 12 January. The names were supplied that day – in other words, within 12 days of the first request. Once again, that evidence is uncontested.

69. It is clear none of the investors paid any money for their shares out of their own pockets, nor were they asked for payment. The evidence clearly established the shares for both IPOs were purchased with loans from Caeneus Minerals Limited, an ASX listed company of which Mr Bowker was the chairman and secretary. The shares were purchased from each of the named individuals by the Bowker Investment Account. In the case of Skin Elements, the shares were acquired from the named persons approximately one month after being issued and, in the case of Roto-Gro, the acquisition occurred approximately 18 days after being issued. There is no evidence that Mr Bowker gained financially from these transactions, as it appears the share price in each case had gone down.

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[60] Transcript, pp 75-76.

70. We accept Mr Bowker did not receive any payment or commission for providing the names of the investors from either the companies, or from Barclay Wells. We also accept he was doing a favour for Barclay Wells on the basis that Barclay Wells would send him client referrals in the future, and he would be appointed as the company secretary and director of Roto-Gro.

71. We note there were some contradictions in the evidence as to whether the investors were spoken to directly by either Mr Bowker or Mr Bekarma, who was second in charge to Mr Bowker. We do not think those discrepancies make any difference for present purposes. Mr Bowker was the person in charge of the Somerville entities. He had ultimate responsibility for the transactions in question. There is no suggestion on the evidence that Mr Bekarma acted otherwise than at the direction of Mr Bowker. There is no doubt on the evidence that the names provided by Mr Bowker were used by the stock broker (and potentially others) to satisfy decision-makers at the ASX that each of the companies had satisfied the relevant listing rules requiring a "minimum spread" that included sufficient "genuine investors".

72. We have already explained our understanding of the concept of a "*genuine investor*" for the purposes of the ASX Listing rules in paragraph [17] above, as derived from the examples of what constitutes "*artificial means*". With that understanding in mind, we make the following findings regarding each individual investor:

    (i) Mr Chng unequivocally stated that he was not interested in owning shares and was not interested in making a profit, but he was willing to assist with the spread. We are satisfied that evidence establishes on its face that Mr Chng was not a genuine investor in Skin Elements.

    (ii) Ms Amry did not pay any money for her shares and specifically stated that she did not want to become a shareholder. Further, according to her statement, Ms Amry did not know that she was a shareholder in Roto-Gro until she prepared a transfer in her name. We therefore find that Ms Amry was not a genuine investor in either Skin Elements or Roto-Gro.

    (iii) We accept Mr Gill was *potentially* a genuine investor, in that he initially agreed to participate in the IPO of Skin Elements and expected to pay $2,000 for the shares. But there is no evidence he was ever asked to pay

for the shares, and did not know that he had been issued shares until he was asked to sign the off-market transfer forms. With respect to the IPO for Roto-Gro, Mr Gill's statement was that he never applied for shares in that company. We therefore find Mr Gill was not a genuine investor in either Skin Elements or Roto-Gro.

(iv) Ms Lo knew her name would be used to purchase shares in Skin Elements, but understood that neither she, nor her sister, would be required to hold or pay for the shares. She did not complete any forms and did not pay any money for the shares. They plainly did not regard the transaction as a real and enforceable arrangement; they were simply allowing their names to be used for the purposes of what was, for them, a purely formal exercise. Ms Lo was not a genuine investor in Skin Elements. We reach the same view in relation to her sister.

(v) Mr Baath, like Mr Gill, was potentially a genuine investor in the sense that he considered buying the shares, however he never followed up to confirm this purchase, never paid anything for the purchase, and did not know that he owned any shares. We therefore find Mr Baath was not a genuine investor in Skin Elements.

(vi) Mrs Indrans agreed to purchase the Skin Elements shares, and her understanding was that Mr Bowker would help her to finance the purchase of the shares for which she would later pay him back. However with regards to her shares in Roto-Gro, Mrs Indrans did not have any knowledge that she owned the shares. We therefore find Mrs Indrans was likely a genuine investor in Skin Elements, but she was not a genuine investor in Roto-Gro.

73. We were satisfied Mr Bowker was an honest witness, but he appeared to have limited insight into his participation in a course of conduct that led the ASX into the error of accepting the minimum spread requirements had been satisfied. We were particularly troubled by Mr Bowker's argument that the named individuals (other than Mrs Indrans) were all sophisticated investors who should have spoken up and opted out of the investments if they did not want to proceed. That was extraordinarily presumptuous.

74. We accept Mr Bowker has learnt from his experiences and is unlikely to engage in similar conduct again (see further discussion regarding future conduct below). However, his comments that the investors could have opted out of the transactions tend to indicate he may not fully appreciate the seriousness of the conduct – although he does appear to appreciate the seriousness of the consequences for himself personally. We were also troubled that Ms Amry, Mr Gill, and Ms Lo were Mr Bowker's employees and may not have considered themselves in a position to question Mr Bowker or opt-out of the investments. The imbalance in the power relationship does not appear to have occurred to Mr Bowker.

THE LEGISLATIVE REGIME AND ITS OPERATION

75. We now turn to consider the legislative regime under which banning orders are made. We first set out the objects of the banning order regime before turning to the question of whether Mr Bowker has contravened a financial services law by engaging in misleading or deceptive conduct. It is common ground that a contravention would enliven the power to make a banning order. We then consider whether regulatory action is appropriate in the circumstances of this case.

76. Chapter 7 of the Act deals with the regulation of financial services and markets. The objects of Chapter 7 are explained in s 760A which provides:

> *The main object of this Chapter is to promote:*
>
> *(a) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and*
>
> *(b) fairness, honesty and professionalism by those who provide financial services;*
>
> *(c) fair, orderly and transparent markets for financial products; and*
>
> *(d) the reduction of systemic risk and the provision of fair and effective services by clearing and settlement facilities.*

77. We must keep those objects in mind as we deal with the applicant. We must also be conscious of ASIC's objectives given we step into its shoes when we make our decision. Those objectives are set out in s 1 of the *Australian Securities and Investments Commission Act 2001* (Cth) (the ASIC Act). Section 1(2)(b) says ASIC must strive to "*promote the confident and informed participation of investors and consumers in the financial system*".

78. The power to impose a banning order is found in s 920A of the Act. The power is enlivened in a range of circumstances, including where:

> *(1) …*
>
> *(e) the person has not complied with a financial services law (other than section 921E (relevant providers to comply with the Code of Ethics)); or*
>
> *(f) ASIC has reason to believe that the person is likely to contravene a financial services law; …*

79. A "*financial services law*" is defined in s 761A of the Act to include a provision in Chapter 7 of the Act, which includes s 1041H. We note ASIC's delegate found:

- the applicant engaged in misleading or deceptive conduct in contravention of s 1041H; and
- ASIC had reason to believe the applicant would likely contravene s 1041H or another financial services law in the future.

Misleading or deceptive conduct

80. Section 1041H(1) of the Act provides, in part, that a "*person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive*". Subsection 1041H(2) provides a non-exhaustive list of examples of "*conduct in relation to a financial product*", including:

> *(a) dealing in a financial product;*
>
> *(b) without limiting paragraph (a):*
>
> *(i) issuing a financial product;*
>
> *…*
>
> *(x) carrying on negotiations, or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by any of subparagraphs (i) to (ix).*

81. The language in s 1041H is broad. It creates a general prohibition on misleading or deceptive conduct in relation to financial products and services: see *Australian Securities and Investments Commission v Narain* (2008) 169 FCR 211 at 223 per Jacobson and Gordon JJ. To begin with, the prohibition is directed to "*a person*" (defined in s 761A of the Act). There is no requirement that the person in question must hold or operate under an AFSL or otherwise be regularly engaged in the business of providing financial services.

82. The language of the prohibition also makes clear that the intent of the person engaging in the conduct is irrelevant. A contravention is potentially established if the conduct has the capacity to lead into error in the circumstances. It makes no difference if the person who engages in the conduct did not know or suspect the conduct was misleading: see, for example, *Hornsby Building Information Centre Pty Ltd and Anor v Sydney Building Information Centre Ltd* (1978) 140 CLR 216 at 234 per Murphy J; see also *Australian Securities and Investments Commission v Stone Assets Management Pty Ltd* (2012) 205 FCR 120. In that case, which considered the operation of s 1041H, Besanko J explained (at [33]) misleading or deceptive conduct would be made out where what is "*established is that the defendant has engaged in conduct in relation to a financial product or service that is misleading of deceptive or is likely to mislead or deceive*". His Honour stressed that no mental element to the conduct was required.

83. There is also no requirement that the person in question must have a *direct* relationship with the individuals or audience members that are, or could be, led into error. That was made clear in the Full Federal Court's decision in *Narain*. Finkelstein J stressed (at 214) the words *in relation to* "*ought to receive broad construction*" to further the protective and regulatory objects of the Act. His Honour explained that construing s 1041H so it only applied to direct relationships or connections – such as requiring that the person in question be "*dealing with the financial product*" himself or herself – would not be consistent with the objects of the Act.

84. ASIC's delegate found Mr Bowker engaged in misleading or deceptive conduct when he provided the names of buyers who were not genuine investors in order to satisfy, by artificial means, the minimum spread requirements. We have made findings of fact that at least some of the individuals identified on those lists were not genuine investors, even if Mr Bowker (unreasonably) did not appreciate that fact. We have also accepted those lists were passed to the ASX and that the relevant ASX decision-maker was led into error by those lists – and that the lists had the clear potential to mislead. While Mr Bowker did not supply the lists to the ASX, he knew the names he had supplied to the broker would be passed on to the ASX for the purposes of satisfying it that the minimum spread requirements were met in each case. There is no dispute that shares are financial products; we are satisfied the applicant's conduct in compiling and supplying the lists for use by another in the circumstances we described amounts to misleading or deceptive

conduct in relation to a financial product. It follows we accept the applicant contravened s 1041H, and therefore contravened a financial services law.

Likelihood of contravening a financial services law in the future

85. The ASIC delegate found Mr Bowker was likely to engage in further contraventions of financial services laws in the future. The finding was apparently made on the strength of Mr Bowker's comments when he was interviewed by ASIC officers on 30 August 2017. In the course of that interview, Mr Bowker stated he had established a close relationship with the broker who had requested the names for the IPOs and that he would help out with Mr Bowker's attempt to open his own broking firm.[61] Mr Bowker went on to say part of the business of his proposed broking firm would be the provision of corporate advisory services to companies.[62] The new business would also assist with capital raising and IPOs.

86. In its SFIC, ASIC noted Mr Bowker incorporated two companies which may have been part of attempts to establish a broking firm: KBH Corporate Pty Ltd (KBH Corporate) and KBH Securities Pty Ltd (KBH Securities). Mr Bowker was the sole director and shareholder of KBH Corporate.[63] KBH Corporate traded until 23 April 2019, when a liquidator was appointed. ASIC noted a web page for KBH Corporate advertised services including Corporate Accounting Services, Corporate Advisory and Capital Raising Expertise.[64] The last of these activities included work on capital raising assistance, IPOs and disclosure documents, and work with a selection of brokers and underwriters.

87. Mr Bowker was also the sole director and shareholder of KBH Securities.[65] However, ASIC acknowledged there is no evidence KBH Securities ever traded and Mr Bowker applied to deregister the company on 7 May 2019.[66]

88. Mr Bowker discussed his future intentions in the course of the hearing.[67] He said ASIC's regulatory action had devastated his business and created an obstacle to him working as

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[61] Exhibit 1, T3.18, p 322.
[62] Exhibit 1, T3.18, p 340.
[63] Exhibit 1, T3.10, p 199.
[64] Respondent's Statement of Facts, Issues and Contentions, at [40].
[65] Respondent's Statement of Facts, Issues and Contentions, Annexure D.
[66] Respondent's Statement of Facts, Issues and Contentions, at [42].

an accountant, let alone working in a business that provided financial services. He explained:

> *…following the media release with ASIC all the clients left, so KBH is currently in liquidation. I've tried to apply for jobs and had the media release sent back to me so it's highly unlikely that I will ever work in the accounting industry again. I have been working cleaning gutters and cleaning windows currently, so there's not a high prospect of, you know, this whole thing has basically cost half a million dollars in losses and so I need some way of redeeming and getting back in the industry that I am trying to do, otherwise I don't see myself working in the accounting industry again following what has happened here.*

89. Mr Bowker denied he was going into business with Mr Gardiner or anyone else in a stock broking firm. At the hearing he explained his involvement with the stock broking firm was limited to "*helping them try to get premises in the top floor of our building but at no stage was I going to be directly involved in a stockbroking company*". He went on to say he doubted he would be able to return to accounting in his own practice because he may yet be subject to regulatory action at the hands of the Tax Practitioners Board and the Chartered Accountants Board.

90. It is understandable that ASIC was under the impression Mr Bowker planned to establish a broking firm, given that he made two separate statements indicating such an intention. This included the statement that: "*I am actually trying to start up a broking firm upstairs*". It is at least possible that, at the time he was interviewed by ASIC, Mr Bowker did have an intention to establish a broking firm which would involve him providing financial services. We have no reason to doubt Mr Bowker's evidence that, by the time of the hearing before us, he had abandoned whatever ambitions he might have had to establish a financial services business. We accept his evidence that he has learnt from this experience and is unlikely to engage in similar conduct in the future, although, as we observed above, we are concerned Mr Bowker does not fully appreciate the seriousness of the conduct itself. We also accept Mr Bowker is unlikely to be in a position where he would have the opportunity to breach financial services laws in the foreseeable future given his business has gone into liquidation and he no longer has any clients, and that he may yet face disciplinary action that could impact on his ability to practice as an accountant.

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[67] Transcript, pp 77-78.

91. In all the circumstances, we are not satisfied there is a basis for finding ASIC has reason to believe the applicant is likely to contravene a financial services law in the future.

IS REGULATORY ACTION APPROPRIATE?

92. The power to impose a banning order under s 920A is enlivened once we are satisfied the applicant contravened a financial services law. But that does not mean we *must* impose a banning order, much less impose an order of a particular duration. We must be satisfied it is appropriate to make a banning order of a particular duration in the circumstances of the case given the objectives of the regulatory regime. The circumstances of the case include the nature of the contravention and the position of the applicant. The objectives of the regulatory regime are set out in s 760A of the Act and the s 1 of the ASIC Act. Those provisions make the clear the regulatory regime is focused on consumer and investor protection, but also on the need to promote informed and efficient markets – and the need to promote confidence in those markets. The banning power is not intended to be punitive.

93. We note ASIC has published guidance to the industry and to ASIC's decision-makers in *Regulatory Guide 98: ASIC's powers to suspend, cancel and vary AFS licences and make banning orders* (RG 98). Table 2 of RG 98 sets out the key factors ASIC will consider in deciding whether to make a banning order. Table 3 of the RG 98 provides examples of conduct relating to specific periods of banning. We are generally in agreement with that guidance. The guidance is useful and tends to promote consistency, but it should not be inflexibly applied. It is still necessary to consider what is appropriate in the individual circumstances of each case as the Tribunal steps into the shoes of the original decision-maker: see, for example, *Davidof and Australian Securities and Investments Commission* [2017] AATA 2594 at [19] per DP Rayment and SM Kelly.

THE EXERCISE OF THE DISCRETION

94. We look firstly to the nature and seriousness of the conduct. There was no dishonesty as such: we are satisfied it did not occur to Mr Bowker that he was doing anything which needed to be concealed. He thought he was just gathering names as a favour for a business associate, albeit that a moment's thought should have given him pause. He knew the names were being supplied to the ASX to satisfy a listing requirement, and he could not (or should not) have been satisfied that the names he supplied were those of

genuine investors. He should have been aware that he was doing something (or assisting somebody else to do something) that was wrong.

95. We accept Mr Bowker did not derive any direct benefits from either listing, although he apparently expected a measure of goodwill to flow his way in due course. There was also no direct loss to any of the named investors. Mr Bowker bought their shares back from them, so he sustained the losses which occurred. There is no evidence of direct loss to others in the market, although there is potentially an indirect and unquantifiable loss when a company is listed when it might not otherwise have satisfied the ASX that it should be admitted to the Official List.

96. We are not aware of any relevant circumstances that suggest Mr Bowker has been lax in the conduct of his business or personal affairs, although it unclear how that evidence would assist in circumstances where he did not and does not conduct a financial services' business. His interaction with ASIC following the conduct in question has also been unremarkable: it does not count for or against him.

97. We have already made clear it is unlikely Mr Bowker will make the same mistake again. It follows that specific deterrence is not an important consideration in this case, but the need for general deterrence is certainly a factor.

98. The ASX listing rules are part of a properly operating market. The minimum spread requirement is an important feature of those rules. The role of the ASX in administering the rules becomes much more difficult if businesses seeking its approval are not scrupulously honest. If the investing public loses confidence in the rules or the administrator, that impacts on the functioning of the market. It follows that misleading or deceptive conduct in relation to the ASX listing rules is a very serious matter.

99. A banning order is appropriate because it will ensure other participants appreciate the costs of being dishonest with the market regulator. Participants in the market who might otherwise be tempted to effectively ignore the listing rules (and the minimum spread requirement in particular) need to know that sort of behaviour will be met with a stringent response. Indeed, Mr Bowker's casual approach to the listing rules clearly indicated that he, at least, did not see them as having any real force or effect. The broker he dealt with appeared to regard the listing rules as an inconvenience to be managed rather than a

substantive requirement. A banning order will send a clear signal that the listing rules have teeth. It will educate other participants in the market and promote compliance, and it will give investors confidence in the rules, the market and the regulator.

100. There are some individual circumstances that ought to be considered in mitigation. We are conscious of the fact Mr Bowker was not in the business of providing financial services. While we have found he should have known the conduct was deeply problematic, we accept he may not have been as alive to the magnitude of what he was doing precisely because he was not in the industry. He has also paid a heavy penalty as a consequence of the whole affair. He has lost his business and has been driven from the accounting profession as a result of the bad publicity. He is facing disciplinary action from professional bodies. Whatever hopes he may have had to enter the financial services industry appear to have been dashed. The conduct was not isolated to a single instance – there were two separate lists of investors prepared for separate IPOs – but we are not aware of this sort of conduct occurring before. The applicant is contrite, but only up to a point: he still disputes some of the investors were genuine because he thinks it is acceptable to assume from their silence that they agreed to let him undertake the transactions on their behalf. At the same time, we accept he has learned from the experience and he is unlikely to do anything like this again, assuming he ever has the opportunity.

101. In all the circumstances, we are satisfied it is appropriate to impose a banning order. While we acknowledge a ban will be at least partly symbolic, it is an important symbol nonetheless: a ban will send a message of general deterrence.

Length of the banning order

102. Table 3 of RG 98 identifies a number of factors which assist us in calculating the appropriate duration of a ban. Reference to those factors suggest Mr Bowker's conduct falls within the three to 10 year banning range given that the conduct:

- flouts the listing rules, which is clearly inconsistent with the orderly operation of a financial market. That conduct may also have an adverse impact on confidence in or the integrity of a financial market, although there was no direct evidence of that occurring;

- is misleading or deceptive;
- disregards the listing rules, if not the law and regulations;
- was deliberate. The applicant did not undertake the conduct for immediate gain but he was motivated by an expectation of some sort of benefit;
- demonstrated irresponsibility and perhaps carelessness, albeit we are satisfied the applicant would learn from the conduct and was unlikely to repeat it in the future.

103. We have already observed the applicant acted to protect the named individuals from any loss when he arranged for the shares to be repurchased from them at the issue price. But this was not done in an attempt to remedy the contravention. This re-purchase appeared to be part of the overall transaction, and tends to underline the artificial nature of what was occurring.

104. When we have regard to those factors, we are satisfied Mr Bowker's conduct falls at the lower end of the 3 to 10 year banning range in Table 3 of RG 98. But we are also mindful of the need to look at the specific and unusual features of the case.

105. We have already explained the principle justification for imposing a ban is general deterrence. It follows the applicant is, to some extent, being used as an example that will promote and reinforce a culture within the financial services industry. Yet the applicant has never participated in that industry. That may go some way towards explaining why he did not appreciate the magnitude of what he was doing. There is also no realistic prospect of him doing anything like this again. In the circumstances, we are satisfied a banning period of two years duration would be sufficient to achieve the protective, educative, confidence building and deterrent objectives set out in the Act.

CONCLUSION

106. The Banning Order Decision dated 2 April 2019 is varied so that the applicant is banned from providing financial services for a period of two years.

I certify that the preceding

106 (one hundred and six) paragraphs are a true copy of the reasons for the decision herein of Deputy President Bernard J McCabe, Senior Member Dr M Evans-Bonner

............................[SGD]...

Associate

Dated: 6 March 2020

Date(s) of hearing:	**21 and 22 October 2019**
Applicant:	**In person**
Counsel for the Respondent:	**C Walsh**
Solicitors for the Respondent:	**Australian Securities and Investments Commission**