

PART 7.5A OF THE CORPORATIONS REGULATIONS 2001

INFRINGEMENT NOTICE

To: AMP Life Limited
33 Alfred Street
Sydney NSW 2000

Take Notice: The Australian Securities and Investments Commission (ASIC) gives this infringement notice to AMP Life Limited ACN 079 300 379 (*AMP Life*) under regulation 7.5A.104 of the *Corporations Regulations 2001 (Regulations)*. To comply with this notice AMP Life must:

Pay a penalty to ASIC on behalf of the Commonwealth, in the sum of \$275,500.

This infringement notice is given on 5 February 2020.

The unique code for this notice as required by paragraph 7.5A.106(b) of the Regulations is R20200000035230.

The terms defined in Rule 1.2.3 of the *ASIC Derivative Transaction Rules (Reporting) 2013 (ASIC Rules)* have the same meaning when used in this notice.

Alleged contraventions

At all relevant times subrules 2.2.1(1) and 2.2.3(1) of the ASIC Rules required AMP Life to report information about each of its Reportable Transactions to a Licensed Repository or a Prescribed Repository, generally by no later than the end of the next Business Day after the requirement to report the information arose. Rule 2.2.6 required AMP Life to take all reasonable steps to ensure the information reported under subrule 2.2.1(1) was and remained complete, accurate and current.

ASIC has reasonable grounds to believe that AMP Life has contravened sub-rules 2.2.1(1), 2.2.3(1) and rule 2.2.6 of the ASIC Rules by:

- a. failing to report core information regarding Reportable Transactions entered into in New Zealand on 113 occasions;
- b. failing to correctly report, or report at all, collateral information for Reportable Transactions on 388 occasions; and
- c. failing to take all reasonable steps to ensure that BNP, on behalf of AMP Life, was reporting information under subrule 2.2.1(1) that was and remained at all times, complete, accurate and current,

to a Licensed Repository or a Prescribed Repository within the specified timeframe.

Background

By agreement between AMP Life and AMP Capital Investors Ltd (AMP Capital), AMP Capital was authorised to enter into certain types of derivative transactions for AMP Life and to report such transactions to a Licensed Repository, during the period 31 August 2015 to 26 February 2018 (Relevant Period). DTCC Data Repository (Singapore) Pte Ltd (DTCC) was a Licensed Repository available on each Business Day during the Relevant Period to accept a report of information or changes to information in the time required under sub-rules 2.2.1(1) and 2.2.3(1).

AMP Life manages its OTC derivatives portfolio through AMP Capital. AMP Life's derivatives positions are recorded and maintained in operations systems operated by AMP Capital and its custodian, BNP Paribas Fund Services Australasia Pty Ltd (BNP). AMP Life has delegated its reporting of OTC derivatives transactions entirely to AMP Capital. AMP Capital has further delegated that reporting to BNP.

On 24 April 2015 AMP Life reported a breach of sub-rule 2.2.1(1)(a) to ASIC. AMP Life had become aware of the failure to report the entry into a new interest rate swap. The breach was also a contravention of rule 2.2.3. On 25 May 2015, AMP Life notified ASIC that it had become aware of further failures to report trades that breached the ASIC Rules. Those reported failures are not the subject of an infringement notice or penalty under regulation 7.5A.104(1) but are relevant to considering subsequent alleged contraventions.

On 31 August 2015, AMP Life confirmed that it had put in place a reporting process in respect of OTC derivative transactions and positions to comply with the ASIC Rules which was intended to cover all the reporting obligations of both AMP Life and National Mutual Life Association of Australasia Limited (NMLA) (Reporting Solution). Subsequent events showed, however, that the Reporting Solution did not operate as intended to cover all their reporting obligations.

On 4 November 2015, AMP Life advised ASIC that it had commenced derivative transaction reporting in accordance with Phase 3A reporting requirements from 31 August 2015 for interest rate and credit derivatives; and from 12 October 2015 for equity, FX and commodity derivatives. AMP Life also confirmed that it had commenced position reporting in respect of interest rate and credit derivatives from 19 October 2015 and was on track to comply with the remaining position reporting requirements from 18 April 2016.

On 5 August 2016 AMP Life requested that the breach report made to ASIC on 24 April 2015 be re-opened as it had been discovered that the Reporting Solution had excluded transactions entered into in New Zealand where AMP Life and NMLA were counterparties. Accordingly, Reportable Transaction information relating to New Zealand trades had not been reported by AMP Life in accordance with rule 2.2.1(1)(a) by the dates required under rule 2.2.3, or at all.

On 23 February 2017 AMP Life notified ASIC that the reporting issues had been addressed and the Reporting Solution was operational. On 15 April 2019, in response to an inquiry from ASIC on 19 December 2018, AMP Life provided spreadsheets containing details of 1,364 Reportable Transactions and Reportable Positions that AMP Life had failed to report to DTCC. Of the 1,364 Reportable Transactions and Reportable Positions, 940 comprised Reportable Transactions in interest rate derivatives during the period 9 September 2015 to 25 January 2017; and in FX derivatives during the period between 28 October 2015 and 16 January 2017. AMP Life was required but failed to report to DTCC information about one or more of the 940 Reportable Transactions during the Relevant Period on 113 separate Business Days (each a Reporting Day). ASIC alleges failures to comply with the ASIC Rules in respect of 113 of the 940 Reportable Transactions; being one Reportable Transaction per Business Day, for each of the 113 Business Days (collectively the NZ Transactions Reporting Failures).

On 12 February 2018 AMP Life reported to ASIC that AMP Capital had discovered errors in its reporting processes with respect to derivative transactions it had entered into on behalf of AMP Life and consequent discrepancies in some of its reports concerning those transactions submitted on behalf of AMP Life to DTCC since November 2015; being when AMP Life commenced reporting in relation to, among other things, collateral. The breach report also noted that AMP Life had engaged in breaches of rule 2.2.6 on multiple occasions since November 2015.

On 8 March 2018 AMP Life notified ASIC of additional collateral information reporting errors. One error noted was that since 1 November 2015, instead of reporting daily to DTCC AMP Life's collateral balance, BNP, on behalf of AMP Life, had been reporting AMP Life's collateral movement. On 20 May 2019, AMP Life advised ASIC that the error in the collateral information

reporting of the collateral movements, instead of the collateral balances had, in fact, been ongoing since inception of its collateral reporting. On 5 June 2019, AMP Capital advised ASIC that BNP and AMP Capital were appointing KPMG to review the reporting processes. It would appear that the collateral reporting errors are yet to be rectified.

On 12 September 2019 AMP Capital provided ASIC with spreadsheets of Reportable Transactions for which collateral information had not been reported, or, had been incorrectly reported during the period 2 November 2015 to 26 February 2018. During that period AMP Life was required but failed to report correctly, or at all, to DTCC collateral information about 9,224 Reportable Transactions on 388 Business Days (each a Reporting Day). ASIC alleges failures to comply with the ASIC Rules in respect of 388 of the 9,224 Reportable Transactions; being one Reportable Transaction that was required to be reported on each of the 388 Business Days during the Relevant Period (collectively the Collateral Reporting Failures). Of the 388 Business Days, 267 were before, and 121 were after, 1 July 2017.

Under rule 2.2.6, AMP Life, as a Reporting Entity, is relevantly required to take all reasonable steps to ensure that information it reports under rule 2.2.1, whether reported by AMP Life on its own behalf or by any other person on its behalf, is and remains at all times complete, accurate and current. AMP Life reported to ASIC on 12 February 2018 that it had implemented a "new" control to monitor the data quality of its reporting, even though it had been reporting core information since 31 August 2015. ASIC therefore has reasonable grounds to believe that AMP Life did not take reasonable steps to ensure that the information it reported under rule 2.2.1 was and remained complete, accurate and current during the period 31 August 2015 to 12 February 2018.

Details of alleged contraventions

AMP Life is an entity that is incorporated in this jurisdiction and so is an Australian Entity within the meaning of Rule 1.2.3 and a Reporting Entity within the meaning of Rule 1.2.5 of the ASIC Rules.

Throughout the Relevant Period DTCC was a Licensed Repository authorised to accept a report of information in respect of interest rate, credit, equity, commodity and FX derivatives.

AMP Life was a Phase 3A Reporting Entity at all times during the Relevant Period.

AMP Life was required to report to DTCC in accordance with the requirements of Part 2.2 of the ASIC Rules.

Each of the transactions the subject of the NZ Transactions Reporting Failures and the Collateral Reporting Failures was a Reportable Transaction.

For each of the 113 Reportable Transactions the subject of the NZ Transactions Reporting Failures, AMP Life was required to report to DTCC:

- a. core information for the interest rate derivatives transactions to which it was a counterparty from at least 31 August 2015;
- b. core information for the FX derivatives transactions to which it was a counterparty from 12 October 2015;
- c. collateral information for the interest rate derivatives transactions to which it was a counterparty from 2 November 2015; and
- d. collateral information for the FX derivatives transactions to which it was a counterparty from 2 May 2016;

by no later than the next Business Day after entering into each of those transactions.

AMP Life, by its sub-delegate BNP, failed to do so for each of the 113 Reportable Transactions the subject of the NZ Transactions Reporting Failures.

For each of the 388 Reportable Transactions the subject of the Collateral Reporting Failures, AMP Life was required to report to DTCC the collateral information by no later than the next Business Day after entering into each of those transactions. AMP Life, by its sub-delegate BNP, failed to do so for each of the 388 Reportable Transactions the subject of the Collateral Reporting Failures.

AMP Life failed to take reasonable steps to ensure that the information it reported on its own behalf, or by another person on its behalf, under rule 2.2.1 was and remained complete, accurate and current as required by rule 2.2.6 during the Relevant Period.

Maximum pecuniary penalty in relation to a contravention of ASIC Rules 2.2.1, 2.2.3 and 2.2.6

The maximum pecuniary penalty that a Court could order AMP Life to pay for a single contravention of ASIC Rules 2.2.1, 2.2.3 and 2.2.6 that occurred from the commencement of the Relevant Period to 1 July 2017 is \$180,000 and \$210,000 from 1 July 2017.

The maximum pecuniary penalty that may be payable by AMP Life under an infringement notice given under regulation 7.5A.104 for a single contravention of those ASIC Rules that occurred from the commencement of the Relevant Period to 1 July 2017 is \$36,000; and \$42,000 from 1 July 2017 to the end of the Relevant Period.

Penalty under the Infringement Notice

The penalty payable under this infringement notice for each alleged contravention of Rule 2.2.1 is:

- \$500 for each of the 113 alleged contraventions relating to the NZ Transactions Reporting Failures; and
- \$500 for each of the 388 alleged contraventions relating to the Collateral Reporting Failures.

The penalty payable under this infringement notice for the alleged contravention of Rule 2.2.6 is \$25,000.

The total penalty of \$275,500 specified in this Infringement Notice is payable to ASIC on behalf of the Commonwealth. Payment may be made by bank cheque to the order of the Australian Securities and Investments Commission, or, by electronic funds transfer to the Australian Securities and Investments Commission.

In determining this matter and the appropriate pecuniary penalty to be applied, ASIC and AMP Life have noted the following matters:

- The reporting failures took considerable time to come to AMP Life's notice and there were two sets of breaches of the ASIC Rules, reported on 5 August 2016 and 12 February 2018, that occurred after the initial breach report in April 2015;
- The duration of the contraventions and reporting failures were significant. The NZ Transactions Reporting Failures occurred over a period of approximately 1 year and 4 months (from September 2015 to January 2017) and the Collateral Reporting Failures occurred over a period of approximately 2 years and 3 months (from November 2015 to February 2018). There was a systemic failure in ensuring that the information reported, and the changes to that information were and remained complete, accurate and current during the period;

- The NZ Transactions Reporting Failures took 11 months, and the Collateral Reporting Failures took over two years, to come to AMP Life's notice after it commenced reporting core information and collateral information, respectively. The time taken to identify the reporting problems that caused the contraventions shows serious inadequacies in AMP Life's internal and outsourced processes and procedures for monitoring the accuracy of its reporting;
- The above matters are exacerbated by the fact that the NZ Transactions Reporting Failures took place after the Reporting Solution had been implemented following initial reporting of failures in April 2015 and as that Reporting Solution had not been applied to New Zealand derivatives transactions. The breaches reported in February 2018 are yet to be rectified;
- The contraventions were not dishonest or deliberate but rather were the result of administrative failing relating to reporting processes and systems;
- Action has been taken and continues to be taken to remedy the contraventions through backloading of historical transactions and the implementation of systems and processes aimed at preventing future contraventions of the same kind;
- In relation to the Collateral Reporting Failures, the core information relating to the affected transactions had been reported, although the core information is insufficient, and the collateral information is needed, to monitor systemic and institutional risk;
- ASIC's exercise of discretion in adopting an approach of alleging contraventions of a subset of the total contraventions of the ASIC Rules (being, 113 Reportable Transactions in respect of the NZ Transactions Reporting Failures and the 388 Collateral Reporting Failures); and not seeking to impose penalties under sub-rule 2.2.3(1) for the same transactions the subject of the failures;
- ASIC's exercise of discretion to treat the systematic failure to comply with rule 2.2.6 as one contravention; and
- The appointment of an external party to review and advise in relation to the reporting systems and processes.

Compliance with the Infringement Notice

AMP Life may choose not to comply with this infringement notice, but if AMP Life does not comply, civil proceedings may be brought against AMP Life in relation to the alleged contraventions.

To comply with this infringement notice, AMP Life must pay the total penalty of \$275,500 within the compliance period. The compliance period:

- a. starts on the day on which the infringement notice is given to AMP Life; and
- b. ends 27 days after the day on which the infringement notice is given to AMP Life;

unless an application is made for an extension.

AMP Life may apply to ASIC for an extension of time to comply with this notice under regulation 7.5A.109 of the Regulations. If AMP Life does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If AMP Life applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- a. 28 days after the day on which the infringement notice was given to AMP Life; and
- b. 7 days after the notice of refusal is given to AMP Life.

AMP Life may apply to ASIC for withdrawal of this notice under regulation 7.5A.111 of the Regulations. If AMP Life does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to AMP Life.

Effect of issue and compliance with Infringement Notice

Under subregulation 7.5A.110(2) of the Regulations, the effects of compliance with this infringement notice are:

- a. any liability of AMP Life to the Commonwealth for the alleged contraventions of Rules 2.2.1, 2.2.3 and 2.2.6 of the ASIC Rules is discharged;
- b. no civil or criminal proceedings may be brought or continued by the Commonwealth against AMP Life for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of Rules 2.2.1, 2.2.3 and 2.2.6 of the ASIC Rules;
- c. no administrative action may be taken by ASIC under sections 914A, 915B, 915C or 920A of the Corporations Act against AMP Life for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of Rules 2.2.1, 2.2.3 and 2.2.6 of the ASIC Rules;
- d. AMP Life is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- e. AMP Life is not taken to have contravened Rules 2.2.1, 2.2.3 and 2.2.6 of the ASIC Rules.

However, these effects do not apply if AMP Life has knowingly provided false or misleading information to ASIC or withheld evidence or information from ASIC in relation to the alleged contraventions of Rules 2.2.1, 2.2.3 and 2.2.6 of the ASIC Rules.

Publication

ASIC may publish details of this infringement notice under regulation 7.5A.115 of the Regulations.



Gai Di Bartolomeo
as a delegate of the Australian Securities and Investments Commission