

## PART 7.5A OF THE CORPORATIONS REGULATIONS 2001

### INFRINGEMENT NOTICE

**To:** AMP Capital Investors Limited  
33 Alfred Street  
Sydney NSW 2000

**Take Notice:** The Australian Securities and Investments Commission (ASIC) gives this infringement notice to AMP Capital Investors Limited ACN 001 777 591 (*AMP Capital*) under regulation 7.5A.104 of the *Corporations Regulations 2001 (Regulations)*. To comply with this notice AMP Capital must:

Pay a penalty to ASIC on behalf of the Commonwealth, in the sum of \$250,500.

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 R20200000035305.

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 Capital to report information about each of its Reportable Transactions, as trustee, 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 Capital 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 Capital has contravened subrules 2.2.1(1) and 2.2.3(1) and rule 2.2.6 of the ASIC Rules by:

- a. failing to correctly report, or report at all, collateral information for Reportable Transactions on 417 separate occasions;
- b. failing to correctly report, or report at all, core information and/or collateral information for Reportable Transactions in FX derivatives on 34 separate occasions; and
- c. failing to take all reasonable steps to ensure it was reporting information under subrule 2.2.1(1), whether reported by AMP Capital or by another person on its behalf, that was and remained at all times complete, accurate and current,

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

## ***Background***

AMP Capital is the holder of an Australian financial services licence (AFSL) and is a trustee for a number of unregistered managed investment schemes. It was such a trustee between 31 March 2016 and 28 September 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 subrules 2.2.1(1) and 2.2.3(1).

AMP Capital is the investment manager for itself (in its trustee capacity) and for several other AFSL holders that are responsible entities and trustees of managed investment schemes, including National Mutual Funds Management Limited, AMP Capital Funds Management Limited (AMPCFM), ipac Asset Management Limited and AMP Investment Services Pty Limited (Other Licensees). BNP Paribas Funds Services Australasia Pty Ltd (BNP) provides middle office services, including recording and maintenance of OTC derivative positions for AMP Capital. In its capacity as trustee of various investment schemes, AMP Capital is a Phase 3B Reporting Entity, as are the Other Licensees. The alleged contraventions relate to AMP Capital in its capacity as trustee of investment schemes and accordingly, as a counterparty to OTC derivatives. The alleged contraventions do not relate to AMP Capital in its capacity as investment manager for itself and the Other Licensees, or, to the Other Licensees themselves.

On 2 October 2015, AMPCFM emailed ASIC a breach notice under s 912D. The notice informed ASIC on behalf of AMP Capital and the Other Licensees that those entities were unable to start reporting their OTC Derivatives as Phase 3B Reporting Entities by the relevant date (AMP Capital Initial Reporting Failures). On 15 December 2015, AMP Capital advised ASIC that 76 funds had been impacted by the transaction reporting defaults foreshadowed in the breach notice of 2 October 2015 and it anticipated compliance to be achieved for FX derivative transactions from at least 31 March 2016. The AMP Capital Initial Reporting 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 25 October 2016, AMP Capital confirmed to ASIC that it had appointed BNP as a delegate to report Reportable Transactions and Reportable Positions on behalf of AMP Capital and the Other Licensees. It was noted that BNP had commenced reporting all new FX transactions from 31 March 2016 and collateral information in relation to those transactions from 27 June 2016; equity/exotics transactions from 2 May 2016 and collateral information in relation to those transactions from 27 June 2016; and credit and interest rate transactions from 25 July 2016.

On 5 January 2018, AMP Capital and the Other Licensees submitted a breach notice to ASIC of contraventions by them of provisions of the ASIC Rules. The breach report noted that as a result of converting collateral files into DTCC format, incomplete or inaccurate collateral amounts had been reported to DTCC since May 2016; as a result of incorrect matching of collateral amounts, some collateralised transactions had incorrectly been reported to DTCC as uncollateralised since November 2015. The report also noted that there were insufficient monitoring and reconciliation controls in place to ensure that all reporting provided on behalf of the AMP Capital Licensees, which included AMP Capital, was complete and accurate. The breach report further noted that an automated solutions had been put in place to correct the incorrect matching errors and that BNP had commenced a reconciliation of historical reporting, which was expected to be complete by 16 February 2018.

On 22 February 2018 AMP Capital and the Other Licensees notified ASIC of additional collateral information reporting errors. One error noted was that since 1 November 2015, instead of reporting daily to DTCC AMP Capital's collateral balance, BNP, on behalf of AMP Capital, had been reporting AMP Capital's collateral movement.

The Regulatory Output Report (now known as the "Trade State Report") is an audit trail of data reported to DTCC and routed by DTCC to regulators, which is also made available by DTCC

to clients to enable trade submission reconciliation and other purposes. On 21 March 2018 AMP Capital and the Other Licensees responded to a request from ASIC on 27 February 2018 for information about whether the Regulatory Output Report was being reviewed by BNP or the responsible entities and what action was taken when issues were detected. The response from AMP Capital and the Other Licensees was that prior to December 2017, the Regulatory Output Report was not used as part of the control environment, but BNP had begun using the report for that purpose.

On 7 May 2018, AMP Capital and the Other Licensees advised ASIC that BNP had lodged with DTCC collateral reporting information to correct the errors reported in the breach notice on 5 January 2018 and had taken action to mitigate the risk of future derivative transaction reporting failures. It was also noted that BNP was now reviewing the Regulatory Output Report from DTCC on a daily basis to confirm that accurate reporting was occurring.

On 5 June 2019 AMP Capital advised ASIC that it and BNP had identified deficiencies in the remediation action taken for the reporting failures identified in the breach notice of 5 January 2018. AMP Capital and BNP formed the view that the starting point for the remediation action taken for the breaches reported on 5 January 2018 may be incorrect. AMP Capital advised ASIC that it and BNP were jointly appointing KPMG to review the reporting processes at AMP Capital and BNP and to investigate the effectiveness of past remediation activities.

On 30 October 2019 AMP Capital responded to a notice issued by ASIC on 6 September 2019 and provided ASIC with spreadsheets containing details of 10,567 Reportable Transactions for which information as to collateral had either not been reported or had been incorrectly reported during the period between 4 July 2016 and 27 March 2018. Of the 10,567 Reportable Transactions, 9,999 comprised Reportable Transactions in interest rate, credit, equity and/or commodity derivatives that occurred after 25 July 2016 (being the date on which AMP Capital commenced reporting collateral information for those types of OTC Derivatives), during the period 26 July 2016 to 27 March 2018; and FX derivatives that occurred during the period 4 July 2016 to 27 March 2018. AMP Capital was required but failed to report to DTCC collateral information about the 9,999 Reportable, on 417 Business Days (each a Reporting Day). ASIC alleges failures to comply with the ASIC Rules in respect of 417 of the 9,999 Reportable Transactions, being one Reportable Transaction per Business Day, for each of the 417 Business Days (collectively, the AMP Capital Collateral Reporting Failures).

On 30 January 2019, AMP Capital and the Other Licensees emailed ASIC a breach report under s912D in respect of its obligations under the ASIC Rules. The breach report informed ASIC that between 12 October 2015 and 21 September 2018, there had been a "process gap" that had resulted in FX derivative transactions that were manually matched with a counterparty not triggering relevant trade data messages in BNP's reporting system (Calypso). This in turn caused Calypso not to report to DTCC the information in those data messages that is required to be reported under the ASIC Rules. 20 reportable FX derivatives transactions had been identified as not having been properly reported. BNP was continuing to investigate the causes of the reporting errors and was developing a solution to automatically book matched transactions into Calypso. AMP Capital had not been notified of the reporting failures until 4 January 2019. On 11 March 2019, AMP Capital advised ASIC that an additional 474 FX derivatives transactions of AMP and the Other Licensees had been identified as being subject to reporting failures.

On 30 October 2019, in response to the notice issued by ASIC on 6 September 2019, AMP Capital provided ASIC with spreadsheets containing details of 142 Reportable Transactions that had been the subject of the reporting failures referred to in the breach report of 30 January 2019. Of the reporting failures noted by AMP Capital, there were 140 Reportable Transactions in FX derivatives that occurred during the period 27 April 2016 to 25 September 2018 on 34 Business Days (each a Reporting Day). During the period 27 April 2016 to 25 September 2018, AMP Capital was required but failed to report the information about one or more of those Reportable Transactions. ASIC alleges failures to comply with the ASIC Rules in

respect of 34 of the 140 Reportable Transactions, being one Reportable Transaction per Business Day, for each of the 34 Business Days (collectively, the AMP Capital FX Reporting Failures). Of the 34 Business Days, 21 were before, and 13 were after 1 July 2017.

Under rule 2.2.6, AMP Capital, 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 Capital on its own behalf or by any other person on its behalf, is and remains at all times complete, accurate and current. In the breach report to ASIC on 5 January 2018, AMP Capital stated that during the period of the AMP Capital Collateral Reporting Failures there were insufficient monitoring and reconciliation controls in place to ensure that all reporting provided on behalf of the AMP Capital Licensees, including AMP Capital, was complete and accurate. AMP Capital also stated in the letter of 21 March 2018, that the Regulatory Output Report had not been part of its regulatory environment prior to December 2017. Further, in its letter dated 24 October 2019, AMP Capital stated that it had implemented reconciliation and end-of-day controls to ensure that the issues that gave rise to the AMP Capital FX Reporting Failures do not occur again.

### ***Details of alleged contraventions***

AMP Capital 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 Capital was a Phase 3B Reporting Entity at all times during the Relevant Period.

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

Each of the transactions that were the subject of the AMP Capital Collateral Reporting Failures and the AMP Capital FX Reporting Failures was a Reportable Transaction.

For each of the 417 Reportable Transactions the subject of the AMP Capital Collateral Reporting Failures, from 4 July 2016, AMP Capital was required to report to DTCC collateral information by no later than the next Business Day after entering into each of those transactions.

AMP Capital, by its delegate BNP, failed to do so for each of the 417 Reportable Transactions the subject of the AMP Capital Collateral Reporting Failures.

For each of the 34 Reportable Transactions the subject of the AMP Capital FX Reporting Failures, AMP Capital was required to report to DTCC core information from 31 March 2016; and collateral information from 4 July 2016, by no later than the next Business Day after entering into each of those transactions.

AMP Capital, by its delegate BNP, failed to do so for each for each of the 34 Reportable Transactions the subject of the AMP Capital FX Reporting Failures.

AMP Capital 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 Capital to pay for a single contravention of the 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 Capital under an infringement notice given under regulation 7.5A.104 for a single contravention of the 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 417 alleged contraventions relating to the AMP Capital Collateral Reporting Failures; and
- \$500 for each of the 34 alleged contraventions relating to the AMP Capital FX 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 \$250,500 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, I have taken into account the following matters noted by ASIC and AMP Capital:

- The AMP Capital Collateral Reporting Failures and AMP Capital FX Reporting Failures occurred over an extended period and relate to two further sets of breaches that occurred after the AMP Capital Initial Reporting Failures;
- The duration of the contraventions and reporting failures were significant. The AMP Capital FX Reporting Failures occurred over a period of approximately two years and five months (from 27 April 2016 to 25 September 2018) and the AMP Capital Collateral Reporting Contraventions occurred over a period of approximately one year and 8 months (from 4 July 2016 to 27 March 2018);
- AMP Capital was apparently unaware of the AMP Capital Collateral Reporting Failures for approximately a year and a half; and it took almost three years for AMP Capital to become aware of the FX Reporting Failures, which demonstrates serious inadequacies in AMP Capital's internal and outsourced processes and procedures for monitoring the accuracy of its reporting;
- The above matters are exacerbated by the fact that the AMP Capital Collateral Reporting Failures and AMP Capital FX Reporting Failures took place after AMP Capital had taken steps to seek to implement reporting processes in response to the AMP Capital Initial Reporting Failures;
- The errors reported in 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 AMP Capital Collateral Reporting Failures, the core information 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 Reportable Transactions (being, 417 Reportable Transactions in respect of AMP Capital Collateral Reporting Failures and the 34 AMP Capital FX 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 Capital may choose not to comply with this infringement notice, but if AMP Capital does not comply, civil proceedings may be brought against AMP Capital in relation to the alleged contraventions.

To comply with this infringement notice, AMP Capital must pay the total penalty of \$250,500 within the compliance period. The compliance period:

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

unless an application is made for an extension.

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

If AMP Capital 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 Capital; and
- b. 7 days after the notice of refusal is given to AMP Capital.

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

### **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 Capital 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 Capital 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 Capital 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 Capital is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- e. AMP Capital 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 Capital 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