

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/03/2021 3:28:26 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD150/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v COMMONWEALTH SECURITIES LIMITED (ACN 067 254 399) & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 1/03/2021 3:32:29 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2
(rules 2.2 and 15A.3)

Originating process

IN THE MATTER OF COMMONWEALTH SECURITIES LIMITED AND AUSTRALIAN INVESTMENT EXCHANGE LIMITED

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

COMMONWEALTH SECURITIES LIMITED ACN 067 254 399

First Defendant

AUSTRALIAN INVESTMENT EXCHANGE LIMITED ACN 076 515 930

Second Defendant

A. DETAILS OF APPLICATION

This application is made under sections 1317E, 1317G and 1101B of the *Corporations Act 2001 (Cth)* (**Corporations Act**) sections 12GBA and 12GBB of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**), and section 21 of the *Federal Court of Australia Act 1976 (Cth)* (**Federal Court Act**).

The plaintiff seeks declarations of contraventions of the Corporations Act and the ASIC Act, pecuniary penalty orders, compliance orders and costs.

For convenience, the following definitions are noted (together, the **Market Integrity Rules**):

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

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

Filed on behalf of (name & role of party)	Australian Securities & Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Nick Kelton		
Law firm (if applicable)	Australian Securities & Investments Commission		
Tel	(03) 9280 4787	Fax	1300 729 000
Email	nicholas.kelton@asic.gov.au		
Address for service (include state and postcode)	Level 7, 120 Collins Street, Melbourne, VIC		



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

On the facts stated in the Concise Statement dated 1 March 2021, the plaintiff seeks:

DECLARATIONS

1. A declaration pursuant to s 21 of the Federal Court Act that, by reason of:
 - a. the conduct of the First Defendant (**CommSec**) referred to in paragraph 4 (a) - (m) below (the **CommSec Reported Conduct**); and
 - b. various failures in relation to systems, processes and people in the delivery of financial services identified in the internal root cause analysis conducted by CommSec in or around 2019 to identify common underlying factors in respect of the CommSec Reported Conduct (the **CommSec Root Cause Analysis**),

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

2. A declaration pursuant to s 21 of the Federal Court Act that, by reason of:
 - a. the conduct of the Second Defendant (**AUSIEX**) referred to in paragraph 5 (a) – (h) below (the **AUSIEX Reported Conduct**); and
 - b. various failures in relation to systems, processes and people in the delivery of financial services identified in the internal root cause analysis conducted by AUSIEX in or around 2019 to identify common underlying factors in respect of the AUSIEX Reported Conduct (the **AUSIEX Root Cause Analysis**),

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

3. A declaration pursuant to s 12GBA of the ASIC Act that CommSec contravened s 12DB of the ASIC Act by reason of making false or misleading representations that services were of a particular standard or quality and/or had particular performance characteristics by representing that it considered ASX CentrePoint (**ASXCP**) as an execution venue for orders when it did not in fact consider ASXCP for orders from ASB Clients during the period 1 March 2015 to 26 March 2018.



4. Declarations pursuant to s 1317E of the Corporations Act that CommSec contravened s 798H of the Corporations Act by reason of the following contraventions of the Market Integrity Rules:

- a. rule 2.1.3 of the ASX Rules and rule 2.1.3 of the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to have in place appropriate supervisory policies and procedures to ensure compliance with s 912A(1)(a) of the Corporations Act, from 1 March 2015 until the introduction of control reports between August 2018 and May 2019, prior to which CommSec failed to detect brokerage overcharges (which occurred on 39,484 occasions in the period between 1 March 2015 and 27 February 2020);
- b. rule 3.5.9 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to ensure that 1,237 reconciliations of trust accounts performed between 1 March 2015 and 23 March 2020, were accurate in all respects;
- c. rule 3.5.10 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to notify ASIC of reconciliations that were not performed in accordance with the Market Integrity Rules on 9 occasions between 31 May 2018 and 28 November 2019;
- d. rule 3.4.1(1) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to provide trade confirmations as required with respect to 1,206 trade confirmations that were required to be issued between 1 March 2015 and 6 November 2019;
- e. rule 3.4.1(3)(a) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), where confirmations issued by CommSec in respect of market transactions did not contain information required to be included in a confirmation under Division 3 of Part 7.9 of the Corporations Act, being information the clients needed to understand the nature of the transaction to which the confirmations related, on 187,891 occasions between 1 March 2015 and 15 June 2019;
- f. rule 3.4.1(3)(f) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), where equities trade confirmations issued by CommSec involved a crossing (being a transaction in respect of which CommSec acted on behalf of both buying and selling clients to the transaction), without including a statement to that effect, on 17,307 occasions between 24 April 2017 and 29 April 2019;



- g. rule 4.2.1(1)(h) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to maintain accurate records in sufficient detail in relation to confirmations issued between 1 March 2015 and 1 December 2018 for rebooked trades through CommSec, since CommSec did not maintain accurate records in sufficient detail to show particulars of the incorrect brokerage and ASX clear fees used to derive the total value following the rebooked trade shown in confirmations;
- h. rule 2.1.3 of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to have appropriate supervisory policies and procedures in place between 1 March 2015 to October 2018, to ensure that trade confirmations issued by CommSec complied with the requirements of rule 3.4.1 and 4.2.1 of the Market Integrity Rules.
- i. rule 5.6.1(a) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to have in place, between 1 March 2015 and 1 November 2018, an appropriate pre-trade filter in its automated order processing system to detect possible trades where there would be no change in beneficial ownership, resulting in 23 trades being executed on market where there was no change in beneficial ownership;
- j. 5.6.3(1)(a) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to ensure, between 1 March 2015 and 1 November 2018, that its automated order processing system had in place appropriate organisational and technical resources (as evidenced by the failure in paragraph (i) above);
- k. rule 3.2.2 of the Exchange Markets Rules and 3.9.2 of the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to comply with:
 - i. its Best Execution Policy as published on its website at all material times between 1 March 2015 and 26 March 2018; and
 - ii. its Best Execution Policies and Procedures in the period June 2016 to February 2019, in so far as it failed to monitor best execution policy performance on a monthly basis, for each month in the month immediately following or shortly thereafter;
- l. rule 3.1.2(3) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to provide an explanatory



booklet in respect of warrants to 49 retail clients (who between them held 32 accounts) before accepting an order from a client to purchase a warrant on the market for the first time, during the period 1 March 2015 to 18 June 2020;

- m. rule 3.1.8 of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to enter into the required warrant agreement forms with those 49 retail clients (who between them held 32 accounts) prior to entering into a market transaction to buy warrants on behalf of the client, during the period 1 March 2015 to 18 June 2020, affecting 376 buy transactions during that period;
 - n. rule 5A.2.1(1) of the Exchange Markets Rules and rule 7.4.2(1) of the Securities Markets Rules (as in force at the relevant time), by reason of CommSec's failure to include the relevant intermediary identification (by reference to an AFSL number) in regulatory data submitted to relevant market operators on 84,196 occasions during the period 1 March 2015 and 18 July 2019.
5. Declarations pursuant to s 1317E of the Corporations Act that AUSIEX contravened s 798H of the Corporations Act by reason of the following contraventions of the Market Integrity Rules:
- a. rule 3.5.9 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to ensure that 1,175 reconciliations of trust accounts performed between 1 March 2015 and 18 September 2019, were accurate in all respects;
 - b. rule 3.5.10 of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to notify ASIC of reconciliations that were not performed in accordance with the Market Integrity Rules on 4 occasions between 6 June 2018 and 23 September 2019;
 - c. rule 3.4.1(1) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to provide trade confirmations as required with respect to 3,424 trade confirmations that were required to be issued between 1 March 2015 and 27 November 2019;
 - d. rule 3.4.1(3)(a) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), where confirmations issued by AUSIEX in respect of market transactions did not contain information required to be included in a confirmation under Division 3 of Part 7.9 of the Corporations Act, being information the clients



needed to understand the nature of the transaction to which the confirmations related, on 18,367 occasions between 9 November 2015 and 15 June 2019;

- e. rule 3.4.1(3)(f) of the ASX Rules and Securities Markets Rules (as in force at the relevant time), where equities trade confirmations issued by AUSIEX involved a crossing (being a transaction in respect of which AUSIEX acted on behalf of both buying and selling clients to the transaction), without including a statement to that effect, on 297 occasions between 24 April 2017 and 7 May 2019;
- f. rule 4.2.1(1)(h) of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to maintain accurate records in sufficient detail to show particulars of the incorrect expiry date showing the "Liquidation Advice" section of confirmations issued between 1 March 2015 and 23 February 2019, since AUSIEX did not retain records containing the particulars of the incorrect expiry date shown on confirmations issued to customers during that time;
- g. rule 2.1.3 of the ASX Rules and the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to have appropriate supervisory policies and procedures in place between 1 March 2015 to October 2018, to ensure that trade confirmations issued by AUSIEX complied with the requirements of rule 3.4.1 and 4.2.1 of the Market Integrity Rules;
- h. rule 3.2.2 of the Exchange Markets Rules and 3.9.2 of the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to comply with its Best Execution Policies and Procedures in the period June 2016 to February 2019, in so far as it failed to monitor best execution policy performance on a monthly basis, for each month in the month immediately following or shortly thereafter;
- i. rule 5A.2.1(1) of the Exchange Markets Rules and rule 7.4.2(1) of the Securities Markets Rules (as in force at the relevant time), by reason of AUSIEX's failure to include the relevant intermediary identification (by reference to an AFSL number) in regulatory data submitted to relevant market operators on 113 occasions during the period 27 October 2016 and 12 August 2019.

PECUNIARY PENALTIES

- 6. An order pursuant to s 12GBB of the ASIC Act that CommSec pay a pecuniary penalty in an amount considered appropriate by the Court in relation to each of the contraventions of s 12DB of the ASIC Act referred to in paragraph 3 above.



7. Orders pursuant to s 1317G of the Corporations Act that CommSec pay pecuniary penalties in an amount considered appropriate by the Court in relation to each of the contraventions of s 798H of the Corporations Act referred to in paragraph 4 that occurred:
 - a. prior to 13 March 2019; and
 - b. on and from 13 March 2019.

8. Orders pursuant to s 1317G of the Corporations Act that AUSIEX pay pecuniary penalties in an amount considered appropriate by the Court in relation to each of the contraventions of s 798H of the Corporations Act referred to in paragraph 5 above that occurred:
 - a. prior to 13 March 2019; and
 - b. on and from 13 March 2019.

COMPLIANCE PLAN ORDERS

9. An order pursuant to s 1101B of the Corporations Act, that CommSec implement the agreed compliance plan set out at Schedule 1 to this Originating Process.
10. An order pursuant to s 1101B of the Corporations Act, that AUSIEX implement the agreed compliance plan set out at Schedule 2 to this Originating Process.

OTHER ORDERS

11. CommSec and AUSIEX pay the plaintiff's costs.
12. Such other orders as the Court thinks fit.

Date: 1 March 2021

A handwritten signature in black ink that reads 'Nick Kelton'.

Nick Kelton
Solicitor
Australian Securities & Investments Commission

This application will be heard by at [address of Court] at *am/*pm on



B. NOTICE TO DEFENDANT(S) (IF ANY)

TO:

Commonwealth Securities Limited
Ground Floor Tower 1
201 Sussex Street
Sydney NSW 2000

Australian Investment Exchange Limited
Ground Floor Tower 1
201 Sussex Street
Sydney NSW 2000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable

D. FILING

Date of filing: *[date of filing to be entered by Registrar]*

.....
Registrar

This originating process is filed by *[name]* for the plaintiff.

E. SERVICE



The plaintiff's address for service is:

Level 7, 120 Collins Street, Melbourne, Victoria 3000

It is intended to serve a copy of this originating process on each defendant.



SCHEDULE 1

COMMSEC COMPLIANCE PROGRAMME

- 1.1 **Definitions:** In addition to terms defined elsewhere in this document the following definitions apply:
- AFSL** means Australian Financial Services Licence.
- ASIC** means the Australian Securities and Investments Commission.
- ASIC Act** means *Australian Securities and Investments Commission Act 2001*.
- ASX Rules** means the ASIC Market Integrity Rules (ASX Market) 2010.
- Business Day** means a day (other than a Saturday, Sunday or public holiday) on which market participants are open for general business in Sydney.
- Compliance Programme** means the compliance programme orders pursuant to section 1101B of the Corporations Act.
- CommSec** means Commonwealth Securities Limited ACN 067 254 399.
- Competition Rules** means ASIC Market Integrity (Competition in Exchange Markets) Rules 2011.
- Corporations Act** means the *Corporations Act 2001* (Cth).
- Orders of the Court** means the orders made by the Court pursuant to section 1101B of the Corporations Act.
- Independent Expert** means the Independent Expert engaged by CommSec in accordance with paragraph 12.
- Leadership Team** means the leadership team responsible for CommSec business activities.



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

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

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

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

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

Reported Conduct has the meaning given in Schedule 1.

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

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

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



- e) Operational risk management, including, delivery and ongoing operation of a) to d).

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

1.3 As described in Section L of the SOAFAC, CommSec has undertaken an assessment of the causes of the Reported Conduct and has categorised the types of causes identified as relating to one or more of the following categories, at a high level: people, systems and processes. In particular, the Reported Conduct primarily relates to failures across multiple systems, processes and business areas, including both legacy and current systems. The specific root cause categorisations assigned to the Reported Conduct are set out at paragraph 558 of the SOAFAC (**Root Causes**) and include, but are not limited to:

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

1.4 ASIC considers the number, breadth and duration of the Reported Conduct to be indicative of material failures in broader systems and controls at CommSec. The scope of this Compliance Programme is designed to take a



holistic approach to CommSec's Systems and Controls relevant to the Reported Conduct and/or its Root Causes.

Phase 1

2. Phase 1 Review

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

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

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

3. Phase 1 Report

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

- a) a statement containing details of any gap, weakness, risk or deficiency of the existing remediation and the Systems and Controls identified during the course of the Phase 1 Review (**Deficiencies**), as well as details of the cause of any Deficiencies;
- b) assessment and benchmarking of any Deficiencies against existing internationally recognised standards, such as:
 - i. ISO 31000: Risk management;
 - ii. ISO/IEC 38500: 2015 Information technology – Governance of IT for the organisation;
 - iii. COBIT 5, and
- c) if any Deficiency is identified:

- i. details of how the Deficiency impacts the assessments required by the Phase 1 Review at paragraph 2;
 - ii. recommendations on how to rectify identified Deficiencies; and
- d) if no Deficiency is identified, or recommendation made, an explicit statement as to whether the IE has determined in the course of the Phase 1 Review:
- i. that existing remediation resulting from the Reported Conduct and its Root Causes (where applicable) is adequate and effective; and
 - ii. that all Systems and Controls are adequate and effective, such that CommSec has taken reasonable steps to ensure current and ongoing compliance with the Relevant Provisions.

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

- a) to conduct the Phase 1 Review and deliver the Phase 1 Report to CommSec and ASIC within 4 months after the date of the appointment of the IE (or such longer period as agreed in writing by ASIC and CommSec);
- b) to hold monthly bilateral meetings with ASIC to provide ASIC with updates in relation to the Phase 1 Review and the Phase 1 Report (or such longer period as agreed in writing by ASIC); and
- c) if requested by ASIC, also hold tripartite meetings with CommSec and ASIC in relation to the Phase 1 Review and the Phase 1 Report.

4. Phase 1 Remedial Action Plan

4.1 CommSec will address all Deficiencies identified in the Phase 1 Report and any recommendations to rectify all Deficiencies by the IE and develop a plan (**Phase 1 Remedial Action Plan**) to rectify any such Deficiencies and address the IE's recommendations from the Phase 1 Report in accordance with this paragraph 4.

4.2 Any Phase 1 Remedial Action Plan must:

- a) detail the action CommSec proposes to take to address the recommendations identified in the Phase 1 Report to rectify the Deficiencies;
- b) specify the date by which each action will be taken;
- c) identify a suitably senior and qualified representative of CommSec to be responsible for implementation and timely and effective delivery of each action under the Phase 1 Remedial Action Plan; and
- d) detail any accelerated remedial action for any recommendation identified in the Phase 1 Report to be of high priority.

4.3 In developing a Phase 1 Remedial Action Plan, CommSec must:

- a) work with the IE to produce actions to address the Deficiencies and recommendations identified in the Phase 1 Report;
- b) meet with the IE and ASIC no later than 1 month prior to the submission of the Phase 1 Remedial Action Plan to ASIC and the IE in accordance with the time frame set out in paragraph 4.4(a), for discussion of any proposed implementation of the IE recommendations from the Phase 1 Review, including the proposed terms of any Phase 1 Remedial Action Plan;
- c) within 3 Business Days of the meeting held in accordance with paragraph 4.3 (b), provide ASIC and the IE with a draft of the proposed Phase 1 Remedial Action Plan; and
- d) make any reasonable modifications to the proposed Phase 1 Remedial Action Plan requested by:
 - i. ASIC, provided ASIC has made such a request within 20 Business Days (or such longer period as agreed in writing by ASIC and CommSec) after ASIC was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c); or



- ii. the IE, provided the IE has made such a request within 10 Business Days (or such later date as agreed) after the IE was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c).

4.4 CommSec must:

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

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

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

Phase 2

5. Phase 2 Review

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

- a) whether the actions (if any) implemented from the Phase 1 Remedial Action Plan have rectified the Deficiencies and addressed the recommendations made by the IE in the Phase 1 Report; and



- b) the effectiveness of CommSec's implementation of any recommendations and actions arising from the Phase 1 Report; and
- if any Deficiency still exists, to provide further recommendations to adequately and effectively rectify the Deficiency.

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

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

6. Final Report

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

- a) details of the outcome of the testing and assessment set out at paragraph 5.1 above; and
- b) a statement as to whether each of the actions set out in the Phase 1 Remedial Action Plan have been effectively implemented; and
- c) any further recommendation that the IE considers is necessary or appropriate for CommSec to implement in order to ensure:
 - i. any actions in the Phase 1 Remedial Action Plan that the IE considers have not been effectively implemented are effectively implemented; and
 - ii. any Deficiencies are adequately and effectively rectified; and

- d) if no Deficiency is identified or recommendation made, an explicit statement as to whether the IE has determined in the course of the Phase 2 Review:
- i. that Phase 1 Remedial Action Plan was adequate and effective in addressing the Deficiencies identified and recommendations made by the IE in the Phase 1 Report; and
 - ii. that all Systems and Controls are adequate and effective, such that CommSec has taken reasonable steps to ensure current and ongoing compliance with the Relevant Provisions.

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

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

7. Phase 2 Remedial Action Plan

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

7.2 Any Phase 2 Remedial Action Plan must:

- a) detail the action CommSec will take to rectify any Deficiency identified in the Final Report and address the IE's recommendations in the Final Report (if any); and
- b) set out the proposed timeline for completing implementation of each action required under the Phase 2 Remediation Action Plan; and
- c) identify a suitably senior and qualified representative of CommSec to be responsible for implementation and timely and effective delivery of each action under the Phase 2 Remediation Action Plan; and
- d) detail any accelerated remedial action for any recommendation identified in the Final Report to be of high priority.

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

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



- ii. the IE, provided the IE has made such a request within 10 Business Days after the IE was provided with a draft of the proposed Phase 2 Remedial Action Plan in accordance with paragraph 7.3(c).

7.4 CommSec must:

- a) provide the Phase 2 Remedial Action Plan to ASIC and the IE within 3 months following receipt of the Final Report (or such longer period as ASIC approves in writing);
- b) seek written confirmation from:
 - i. ASIC that it has no objection the terms of the Phase 2 Remediation Action Plan, such confirmation not to be unreasonably withheld; and
 - ii. the IE that the Phase 2 Remedial Action Plan will, in the professional judgment of the IE, if implemented, satisfactorily address the Deficiencies and the recommendations made by the IE in the Final Report,and upon receipt of those confirmations, the Phase 2 Remedial Action Plan will be finalised in the terms that are subject to the confirmations; and
- c) meet with ASIC on a monthly basis to provide progress updates in relation to implementation of the Phase 2 Remedial Action Plan including if the implementation of the Phase 2 Remedial Action Plan is likely to be delayed. If the Phase 2 Remedial Action Plan is likely to be delayed, CommSec must seek ASIC's agreement to amend the deadline for the implementation of the Phase 2 Remedial Action Plan, such agreement not to be unreasonably withheld.

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

8. Attestation



8.1 ASIC is to be provided a written statement on behalf of CommSec, signed by the Executive General Manager of CommSec (or equivalent position, as agreed by ASIC) attesting to the following matters

(Attestation):

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

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

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

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



8.3 In the event that:

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

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

9. Ending of the Compliance Programme

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

10. Other

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

10.2 CommSec will, within a reasonable period of receiving a request from ASIC, provide all documents and information reasonably requested by ASIC from time to time for the purposes of assessing CommSec's compliance with the Compliance Programme, including any correspondence with the IE, other than any documents or information subject to a claim of legal professional privilege.

10.3 CommSec will be responsible for the costs of its compliance with the Compliance Programme.

10.4 CommSec and/or ASIC may apply to the Court for a variation of the terms of this Compliance Programme at any time and the Compliance Programme is subject to the Orders of the Court from time to time.

11. Non-compliance



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

12. Appointing the IE

- 12.1 CommSec must request ASIC to approve, within 30 Business Days of the date of the Orders of the Court, or within such longer period as may be agreed in writing by ASIC and CommSec:
- a) the appointment of the IE required for the purposes of the Compliance Programme which meets the criteria in paragraph 12.2 below;
 - b) the draft terms of engagement for that IE that meet the requirements of the Compliance Programme; and
 - c) if ASIC approves the nominated IE and draft terms of engagement following a request by CommSec under paragraph 12.1, CommSec undertakes to appoint the approved IE on the terms approved by ASIC, within 10 Business Days of receiving ASIC's approval, or within such longer period as may be agreed by ASIC and CommSec.
- 12.2 The IE nominated by CommSec:
- a) must have the necessary expertise, experience and operational capacity to perform the role contemplated by the Compliance Programme; and
 - b) must be independent of CommSec, its related bodies corporate and its officers and will at all material times be capable of exercising objective and impartial judgement.



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

13. Appointing a new independent expert

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

14. Terms of engagement

- 14.1 The terms of engagement for the IE will be approved by ASIC in writing before the engagement takes effect (such approval not to be unreasonably withheld) and once ASIC has provided its approval, the terms of engagement may only be varied with the agreement of ASIC (acting reasonably).
- 14.2 CommSec must ensure that the terms of engagement provided to ASIC for approval under paragraph 12.1:
- a) require CommSec to engage the IE to perform the tasks necessary to fulfil CommSec's obligations under the Compliance Programme;



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

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

15. ASIC public reporting

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

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

15.2 In relation to the Compliance Programme, ASIC:



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

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

- a) is personal information (as defined in the Privacy Act 1988 (Cth));
- b) should not be disclosed because it would be against the public interest to do so; or
- c) contains information that would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of CommSec.

16. Interpretation of Compliance Programme

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



Schedule A

The Reported Conduct is:

- a) incorrect brokerage fees charged by CommSec, as detailed at paragraphs [23] to [68] of the SOAFAC (**Brokerage Issue**);
- b) breaches of client money and trust account requirements by CommSec, as detailed at paragraphs [86] to [165] of the SOAFAC, (**Client Money Issue**);
- c) inaccuracies in trade confirmations sent or failure to send trade confirmations as required by CommSec, as detailed at paragraphs [237] to [323] of the SOAFAC (**Trade Confirmations Issue**);
- d) inadequate automated order processing (AOP) filter by CommSec to determine no change in beneficial ownership (NCBO), as detailed at paragraphs [445] to [454] of the SOAFAC (**AOP Issue**);
- e) best execution obligations failures by CommSec, as detailed at paragraph [457] to [481] of the SOAFAC (**Best Execution Issue**);
- f) trading of warrants on CommSec client accounts without having provided a copy of the current explanatory statement in respect of warrants published by the relevant market operator and without a valid Warrant Agreement Form (WAF) on record, as detailed at paragraphs [494] to [506] of the SOAFAC (**Warrant Agreement Issue**); and
- g) failure to adhere to regulatory data requirements by CommSec, as detailed at paragraphs [511] to [521] of the SOAFAC (Regulatory Data Issue).



SCHEDULE 2

AUSIEX COMPLIANCE PROGRAMME

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

AFSL means Australian Financial Services Licence.

ASIC means the Australian Securities and Investments Commission.

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

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

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

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

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

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

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

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

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

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



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

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

NRI means Nomura Research Institute, Ltd.

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

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

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

Reported Conduct has the meaning given in Schedule 1.

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

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

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

- f) Technology and technological governance, including the technology strategy, enterprise architecture that maps the business and technology capabilities, target operating model, approach to system deployment and ensuring system compatibility;
- g) Oversight function, including roles and responsibilities, reporting lines and governance;

- h) Control mechanisms, processes and policies, including on design approval, testing, incident management and change management;
- i) Human resources, skills and competencies; and
- j) Operational risk management, including, delivery and ongoing operation of a) to **Error! Reference source not found.**

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

1.3 As described in Section L of the SOAFAC, AUSIEX has undertaken an assessment of the causes of the Reported Conduct and has categorised the types of causes identified as relating to one or more of the following categories, at a high level: people, systems and processes. In particular, the Reported Conduct primarily relates to failures across multiple systems, processes and business areas, including both legacy and current systems. The specific root cause categorisations assigned to the Reported Conduct are set out at paragraph 568 of the SOAFAC (**Root Causes**) and include, but are not limited to:

- a) inadequate/ineffective testing of specified system requirements;
- b) system specification, including user requirements, were not adequately captured; and
- c) current standards, policies and/or procedures may not be adequately designed to address or clearly describe risks and/or related controls.

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

Phase 1

2. Phase 1 Review

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

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

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

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

3. Phase 1 Report

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

- a) a statement containing details of any gap, weakness, risk or deficiency of the existing remediation and the Systems and Controls identified during the course of the Phase 1 Review (**Deficiencies**), as well as details of the cause of any Deficiencies;
- b) assessment and benchmarking of any Deficiencies against existing internationally recognised standards, such as:
 - i. ISO 31000: Risk management;
 - ii. ISO/IEC 38500: 2015 Information technology – Governance of IT for the organisation;
 - iii. COBIT 5, and

- c) if any Deficiency is identified:
 - i. details of how the Deficiency impacts the assessments required by the Phase 1 Review at paragraph 2;
 - ii. recommendations on how to rectify identified Deficiencies; and
- d) if no Deficiency is identified, or recommendation made, an explicit statement as to whether the IE has determined in the course of the Phase 1 Review:
 - i. that existing remediation resulting from the Reported Conduct and its Root Causes (where applicable) is adequate and effective; and
 - ii. that all Systems and Controls are adequate and effective,

in order to ensure that AUSIEX has taken reasonable steps to ensure current and ongoing compliance with the Relevant Provisions.

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

- a) to conduct the Phase 1 Review and deliver the Phase 1 Report to AUSIEX and ASIC within 3 months after the latter of the Sale or the date of the appointment of the IE (or such longer period as agreed in writing by ASIC and AUSIEX);
- b) to hold monthly bilateral meetings with ASIC to provide ASIC with updates in relation to the Phase 1 Review and the Phase 1 Report (or such longer period as agreed in writing by ASIC); and
- c) if requested by ASIC, also hold tripartite meetings with AUSIEX and ASIC in relation to the Phase 1 Review and the Phase 1 Report.

4. Phase 1 Remedial Action Plan

4.1 AUSIEX will consider all Deficiencies identified in the Phase 1 Report and any recommendations to rectify all Deficiencies by the IE and develop a plan (**Phase 1 Remedial Action Plan**) to rectify any such Deficiencies and address any IE's recommendations from the Phase 1 Report in accordance with this paragraph 4.



4.2 Any Phase 1 Remedial Action Plan must:

- a) detail the action AUSIEX proposes to take to address the recommendations identified in the Phase 1 Report to rectify the Deficiencies;
- b) specify the date by which each action will be taken;
- c) identify a suitably senior and qualified representative of AUSIEX to be responsible for implementation and timely and effective delivery of each action under the Phase 1 Remedial Action Plan; and
- d) detail any accelerated remedial action for any recommendation identified in the Phase 1 Report to be of high priority.

4.3 In developing a Phase 1 Remedial Action Plan, AUSIEX must:

- a) work with the IE to produce actions to address the Deficiencies and recommendations identified in the Phase 1 Report;
- b) meet with the IE and ASIC no later than 1 month prior to the submission of the Phase 1 Remedial Action Plan to ASIC and the IE in accordance with the time frame set out in paragraph 4.4(a), for discussion of any proposed implementation of the IE recommendations from the Phase 1 Review, including the proposed terms of any Phase 1 Remedial Action Plan;
- c) within 3 Business Days of the meeting held in accordance with paragraph 4.3 (b), provide ASIC and the IE with a draft of the proposed Phase 1 Remedial Action Plan; and
- d) make any reasonable modifications to the proposed Phase 1 Remedial Action Plan requested by:
 - i. ASIC, provided ASIC has made such a request within 20 Business Days (or such longer period as agreed in writing by ASIC and AUSIEX) after ASIC was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c);
or

- ii. the IE, provided the IE has made such a request within 10 Business Days (or such later date as agreed) after the IE was provided with a draft of the proposed Phase 1 Remedial Action Plan in accordance with paragraph 4.3(c).

4.4 AUSIEX must:

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

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

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

Phase 2

5. Phase 2 Review

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

- a) whether the actions (if any) implemented from the Phase 1 Remedial Action Plan have rectified the Deficiencies and addressed the recommendations made by the IE in the Phase 1 Report; and



b) the effectiveness of AUSIEX's implementation of any recommendations and actions arising from the Phase 1 Report, and

if any Deficiency still exists, to provide further recommendations to adequately and effectively rectify the Deficiency.

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

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

6. Final Report

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

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

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

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

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

7. Phase 2 Remedial Action Plan

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

7.2 Any Phase 2 Remedial Action Plan must:



- a) detail the action AUSIEX will take to rectify any Deficiency identified in the Final Report and address the IE's recommendations in the Final Report (if any);
- b) set out the proposed timeline for completing implementation of each action required under the Phase 2 Remediation Action Plan;
- c) identify a suitably senior and qualified representative of AUSIEX to be responsible for implementation and timely and effective delivery of each action under the Phase 2 Remediation Action Plan; and
- d) detail any accelerated remedial action for any recommendation identified in the Final Report to be of high priority.

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

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

- ii. the IE provided the IE has made such a request within 10 Business Days after the IE was provided with a draft of the proposed Phase 2 Remedial Action Plan in accordance with paragraph 7.3(c).

7.4 AUSIEX must:

- a) provide the Phase 2 Remedial Action Plan to ASIC and the IE within 2 months following receipt of the Final Report (or such longer period as ASIC approves in writing); and
- b) seek written confirmation from:
 - i. ASIC that it has no objection the terms of the Phase 2 Remediation Action Plan, such confirmation not to be unreasonably withheld; and
 - ii. the IE that the Phase 2 Remedial Action Plan will, in the professional judgment of the IE, if implemented, satisfactorily address the Deficiencies and recommendations made by the IE in the Final Report,

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

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

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



8. Attestation

- 8.1 ASIC is to be provided a written statement on behalf of AUSIEX, signed by the Chief Executive Officer of AUSIEX (or equivalent position, as agreed by ASIC) attesting to the following matters (**Attestation**):
- a) that he or she has read and understood the Phase 1 Report and any Final Report; and
 - b) if any remedial actions were required in response to the IE's recommendations set out in the Phase 1 Report or the Final Report, states whether he or she believes, having made reasonable enquiries, that AUSIEX has implemented the actions identified in the Phase 1 Remedial Action Plan and if applicable, the Phase 2 Remedial Action Plan; and
 - c) states whether he or she believes, having made reasonable enquiries:
 - i. that the remediation relating to the Reported Conduct and its Root Causes (where applicable) has been adequate and effective; and
 - ii. the Systems and Controls are adequate and effective,
 - such that reasonable steps have been taken by AUSIEX to ensure current and ongoing compliance with the Relevant Provisions.
- 8.2 The Attestation will be provided to ASIC at the earlier of:
- a) 20 business days following the delivery by the IE of the Phase 1 Report, if the Phase 1 Report identifies no Deficiencies and makes no recommendations, which contains the statement contemplated in paragraph 3.1(d);
 - b) 20 business days following the delivery by the IE of the Final Report, if the Final Report identifies no Deficiencies and makes no recommendations;
 - c) 20 business days following the giving of the written notice to ASIC referred to in paragraph 7.5; or
 - d) such other date agreed in writing between ASIC and AUSIEX.



8.3 In the event that:

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

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

9. Ending of the Compliance Programme

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

10. Other

- 10.1 The Phase 1 Report, any Final Report, any Phase 1 Remedial Action Plan and any Phase 2 Remedial Action Plan, including a list of concluded actions must be provided to the Leadership Team and Board of Directors of AUSIEX.
- 10.2 AUSIEX will, within a reasonable period of receiving a request from ASIC, provide all documents and information reasonably requested by ASIC from time to time for the purposes of assessing AUSIEX's compliance with the Compliance Programme, including any correspondence with the IE, other than any documents or information subject to a claim of legal professional privilege.
- 10.3 AUSIEX will be responsible for the costs of its compliance with the Compliance Programme.
- 10.4 AUSIEX and/or ASIC may apply to the Court for a variation of the terms of this Compliance Programme at any time and the Compliance Programme is subject to the Orders of the Court from time to time.

11. Non-compliance



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

12. Appointing the IE

12.1 AUSIEX must request ASIC to approve, within 30 business days of the date of the Orders of the Court, or within such longer period as may be agreed in writing by ASIC and AUSIEX:

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

12.2 The IE nominated by AUSIEX:

- a) must have the necessary expertise, experience and operational capacity to perform the role contemplated by the Compliance Programme; and
- b) must be independent of AUSIEX, its related bodies corporate and its officers and will at all material times be capable of exercising objective and impartial judgement.

12.3 The appointment of the IE must be approved by ASIC in writing before the appointment takes effect (such approval not to be unreasonably withheld).

12.4 AUSIEX will provide ASIC with any information, explanation or documents it requests for the purposes of determining whether to approve the appointment of the IE, subject to a claim of legal professional privilege.



12.5 AUSIEX must advise ASIC of the expertise and any prior association of the proposed IE with AUSIEX, its related bodies corporate and officers at the time approval is sought from ASIC.

13. Appointing a new independent expert

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

14. Terms of engagement

- 14.1 The terms of engagement for the IE will be approved by ASIC in writing before the engagement takes effect (such approval not to be unreasonably withheld) and once ASIC has provided its approval, the terms of engagement may only be varied with the agreement of ASIC (acting reasonably).
- 14.2 AUSIEX must ensure that the terms of engagement of the IE provided to ASIC for approval under paragraph 12.1:
- a) require AUSIEX to engage the IE to perform the tasks necessary to fulfil AUSIEX's obligations under the Compliance Programme;
 - b) require AUSIEX to permit the IE, subject to any claim of legal professional privilege, to the extent that it is reasonable having regard to the requirements of this Compliance Programme, to have access to its books, to interview present employees, contractors, agents and/or consultants and to consult with ASIC and disclose to ASIC any further information obtained by the IE in the course of carrying out the engagement for the purposes of the Compliance Programme;
 - c) require AUSIEX to give the IE any information, document, or explanation reasonably requested by the IE in relation to any matter in any way connected with the reports required to be prepared by the IE for the purposes of the Compliance Programme (other than information, documents or explanations subject to a claim of legal professional privilege);
 - d) require AUSIEX to reasonably assist the IE in conducting the work required for the purposes of the Compliance Programme;
 - e) include a statement to the effect that the work of the IE is being carried out for AUSIEX and ASIC, and acknowledging that ASIC is relying on the work of the IE;
 - f) include a statement that, if requested by ASIC, ASIC is to be copied into all or some communications between AUSIEX and the IE;



- g) require that the IE provide ASIC with a copy of the final versions of the Phase 1 Report and any Final Report at the same time as the final version of each report is provided to AUSIEX;
- h) include an acknowledgement that in relation to the Phase 1 Report and any Final Report to be provided to ASIC and AUSIEX, ASIC may from time to time:
 - i. publicly refer to the content of the reports; and
 - ii. make public:
 - 1. a summary of the content of the reports; or
 - 2. a statement that refers to the content of the reports.
- i) require that the IE provide ASIC with a copy of its proposed work and testing plan in relation to the assessment, review and testing required for the purposes of the Compliance Programme;
- j) require that the IE must make any reasonable modifications to its work and testing plan requested by ASIC, provided ASIC has made such request within 10 business days after ASIC was provided with a copy of the proposed work and testing plan (or such longer period as agreed in writing by ASIC); and
- k) make provision for circumstances where an actual or potential conflict of interest arises in relation to the IE, including by requiring that the IE:
 - i. as soon as possible after becoming aware of an actual or potential conflict of interest that arises during the engagement, inform ASIC of the actual or potential conflict of interest;
 - ii. follow the reasonable directions of ASIC to effectively manage the actual or potential conflict of interest; and
 - iii. if the actual or potential conflict of interest cannot be effectively managed, follow the reasonable directions of ASIC to terminate the engagement.



15. ASIC public reporting

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

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

15.2 In relation to the Compliance Programme, ASIC:

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

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

- a) is personal information (as defined in the Privacy Act 1988 (Cth));
- b) should not be disclosed because it would be against the public interest to do so; or
- c) contains information that would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of AUSIEX.

16. Interpretation of Compliance Programme

16.1 In the event that AUSIEX and the IE are unable to agree on the interpretation of any matter the subject of this Compliance Programme,



AUSIEX and the IE must use reasonable efforts to resolve the disagreement and if unable to do so, may request a meeting with ASIC to discuss the matter in an effort to resolve the disagreement. If ASIC requests, each of AUSIEX and the IE are to provide ASIC with a written submission as to the matter in dispute 3 Business Days before any such meeting.



Schedule A

The Reported Conduct is:

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