



ASIC
Australian Securities &
Investments Commission

S02564009

INFRINGEMENT NOTICE

Section 12GX of the *Australian Securities and Investments Commission Act 2001 (Cth)*

Date of giving this notice: 14 November 2023

Unique identification code: S02564009

To: Penta Capital Pty Ltd
ACN 079 136 888
157 Leichhardt Street
Spring Hill QLD 4000

1. ASIC gives this infringement notice under section s12GX of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**).
2. ASIC has reasonable grounds to believe that Penta Capital Pty Ltd (**Penta Capital**) has contravened an infringement notice provision as follows:
 - a. From around 10 May 2022 to 23 February 2023 (**Relevant Period**), Penta Capital contravened section 12DB(1)(a) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making a false or misleading representation that services are of a particular standard, quality, value or grade on its website <https://pentacapital.com.au> (**Website**).

Particulars

- b. The Website states that Penta Capital 'is a wealth and asset manager'.
- c. During the Relevant Period, in Australia, Penta Capital caused the Website to contain the following representation, also referred to at **Annexure A**:

'Simple solutions.

Substantial outcomes.

Insightful. Principled. Global. Simplicity.

25 years 1997.2022'
- d. This representation gives the impression that Penta Capital has been operating as a wealth and asset manager for 25 years (from 1997 to 2022).
- e. Penta Capital made representations on the Website, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:
 - i. the financial services in question were issuing an interest in a managed investment scheme;

- ii. interests in a managed investment scheme are financial products; and
 - iii. issuing financial products is dealing in a financial product. Dealing in a financial product is a financial service.
- f. The representation that Penta Capital has been a wealth and asset manager for 25 years is:
 - i. false because Penta Capital commenced operating as a wealth and asset manager no earlier than on or around 5 May 2022; and
 - ii. misleading because it would give the reader the impression that Penta Capital had been a wealth and asset manager for significantly longer than it had, and that the services rendered by Penta Capital would be of a particular standard, quality, value or grade – being the standard or quality of a firm that has 25 years' experience of operating as a wealth and asset manager.

Amount payable under this notice

3. The amount payable under this notice in relation to the alleged contravention is **\$13,320**. This amount can be paid using the method detailed in the covering letter accompanying this notice.
4. The payment period for the notice will be 28 days, beginning on the day after this notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.
5. Penta Capital may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.

Consequences of paying the amount payable under this notice

6. If Penta Capital pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is withdrawn):
 - (a) any liability of Penta Capital for the alleged contravention is discharged;
 - (b) Penta Capital will not be liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention of the infringement notice provision; and
 - (c) Penta Capital will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.
7. Payment of the amount payable under this notice is not an admission of guilt or liability.

Consequences of not paying the amount payable under this notice

8. Penta Capital may choose not to pay the amount specified in this notice.
9. If Penta Capital does not pay the amount specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, then Penta Capital may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.

10. The maximum pecuniary penalty that a court may order Penta Capital to pay for the alleged contravention is the greatest of:
 - a) \$11,100,000; and
 - b) if the Court can determine the benefit derived and detriment avoided because of the contravention – that amount multiplied by 3; and
 - c) either:
 - i. 10% of annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision;
 - ii. if the amount worked out under subparagraph (i) is greater than an amount equal to \$555 million – \$555 million.
11. The maximum criminal penalty that a court may order Penta Capital to pay for the alleged contravention is \$4,440,000.

Applying for more time to pay the amount payable under this notice

12. ASIC may at its discretion extend the time to pay the amount payable under this notice if ASIC is satisfied that it is appropriate to do so.
13. If Penta Capital wishes to apply for an extension of time to pay the amount specified in this notice, Penta Capital must do so in writing within 28 days after the day the notice is issued (see paragraph 20).

Applying to pay the amount payable under the notice by instalment

14. ASIC may at its discretion make an arrangement for Penta Capital to pay the amount payable by instalments if ASIC is satisfied that it is appropriate to do so.
15. If Penta Capital wishes to apply for an arrangement to pay the amount payable under the infringement notice by instalments, Penta Capital must do so in writing within 28 days after the day the notice is issued to you (see paragraph 20).

Applying to have this notice withdrawn

16. Within 28 days after the day on which this notice is given, Penta Capital may apply to have this notice withdrawn by making written representations to ASIC (see paragraph 20).

Withdrawal of this notice

17. ASIC may at its discretion, by written notice given to Penta Capital, withdraw this notice if ASIC is satisfied that it is appropriate to do so, whether or not Penta Capital has applied to have this notice withdrawn (**withdrawal notice**).
18. If the withdrawal notice is given after Penta Capital has paid the amount specified in this notice, ASIC will refund to Penta Capital the amount paid under the notice.
19. If the notice is withdrawn, then Penta Capital may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.

Requirements for applications

20. An application to have this notice withdrawn, for more time to pay the amount payable under this notice or to pay by instalments:
- a) must be in writing;
 - b) must include the unique identification code set out at the top of this notice;
 - c) must include your reasons for making the application; and
 - d) may be made by forwarding your application to ASIC at the address in paragraph 21.
21. You may contact ASIC in relation to this notice by contacting:

Tom O'Shea
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4000
or by email: ACLInfringementNotices@asic.gov.au



Tom O'Shea
as a delegate of the Australian Securities and Investments Commission

Annexure A

Zoomed In



Zoomed Out

