

DIVISION: EQUITY
LIST: CORPORATIONS
REGISTRY: SYDNEY

IN THE MATTER OF MACQUARIE SECURITIES (AUSTRALIA) LIMITED ACN 002 832 126**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

MACQUARIE SECURITIES (AUSTRALIA) LIMITED ACN 002 832 126

Defendant

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given.



R.H Kenna (L.S.)
Principal Registrar &
Chief Executive Officer

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A. INTRODUCTION

A.1. The parties

1. The plaintiff (**ASIC**) is a body corporate:
 - (a) established by s 7 of the *Australian Securities Commission Act 1989* (Cth);
 - (b) continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (c) able to sue in its corporate name by reason of s 8 of the ASIC Act.
2. The defendant (**MSAL**) is, and at all material times was:
 - (a) an Australian corporation;
 - (b) liable to be sued in its corporate name;
 - (c) a wholly owned subsidiary of Macquarie Group Limited (**Macquarie Group**);
 - (d) the holder of an Australian Financial Services Licence numbered 238947 (**AFSL**);
 - (e) by reason of paragraph 2(d), a “financial services licensee” within the meaning of that term in s 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**);

- (f) authorised by its AFSL to carry on a financial services business to, among other things, deal in a financial product by:
 - (i) issuing, applying for, acquiring, varying or disposing of a financial product in respect of securities; and
 - (ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of securities
 to retail and wholesale clients; and

Particulars

AFSL at [1(b)(i)(D), [1(b)(ii)(E)] (MFR.0003.0004.0001)

- (g) a participant (within the meaning of s 767A(4) the Corporations Act in each of the following licenced markets (as defined by s 9(1) of the Corporations Act):
 - (i) the financial market known as “**ASX**” operated by ASX Limited ACN 008 624 691; and
 - (ii) the financial market known as “**Cboe Australia**” operated by Cboe Australia Pty Limited ACN 129 584 667 (formerly known as Chi-X Limited) (**Cboe**),
 (ASX Limited and Cboe are referred to as the **Market Operator** for the ASX and Cboe Australia, respectively).

A.2. Short selling

3. “**Short selling**” is the practice of a seller selling a financial product (including a security):
 - (a) that the seller does not own; and
 - (b) with the intention of repurchasing the financial product at a later time for a lower price.
4. A “**covered short sale**” includes where a person executes a short sale of a financial product (including a security) and relies on an existing “securities lending arrangement” (within the meaning of s 1020AA of the Corporations Act) to have a presently exercisable and unconditional right to vest the particular security, managed investment

product, foreign passport fund product or other financial product in the buyer at the time of the sale.

Particulars

ASIC Regulatory Guide 196 October 2018 at RG 196.2; Corporations Act, ss 1020AA, 1020B(2).

A.3. Short Sale Reporting Obligations

5. During the period from 11 December 2009 to 14 February 2024 (**Relevant Period**), MSAL transacted covered short sales of financial products (including securities):
 - (a) on its own behalf (**Principal Short Sales**); and
 - (b) on behalf of clients (**Agency Short Sales**),
 on each of:
 - (c) the ASX from at least on or around 11 December 2009; and
 - (d) Cboe Australia from at least around October 2011.
6. MSAL is, and was during the Relevant Period, required to report to the relevant Market Operator certain details about its covered short sale transactions (**Short Sale Reporting Obligations**), including:
 - (a) the number of section 1020B products (within the meaning of s 1020B(1) of the Corporations Act) to be vested in the buyer pursuant to the covered short sale transaction;
 - (b) a description of the product; and
 - (c) the name of the entity that issued the product.

Particulars

Corporations Act, ss 1020AB, 1020AC, 1020B(1) (definition of “section 1020B products”); *Corporations Regulations 2001* (Cth) (**Corporations Regulations**), regs 7.9.100(1) and 7.9.101.

7. During the Relevant Period:

- (a) Australian Financial Services Licensees, including MSAL, in each of the ASX and Cboe Australia were required to comply with the Short Sale Reporting Obligations by reporting to the relevant Market Operator for each relevant section 1020B product, the total volume of covered short sales of the section 1020B product made in the relevant market on each trading day on or before 9:00am on the next trading day; and
- (b) each Market Operator then aggregated and published the total volume of covered short sales per section 1020B product reported to the Market Operator for each trading day on their websites on the next trading day.

Particulars

Corporations Act, s 1020AD; Corporations Regulations, regs 7.9.100, 7.9.101, 7.9.102.

During the Relevant Period, the data referred to in paragraph 7(a) above was submitted to the relevant Market Operator: (a) for data to be submitted to ASX Limited, by uploading the data to the ASX Online portal; or (b) for data to be submitted to Cboe, by emailing the data to a designated email address.

A.4. Regulatory Data Reporting Obligations

8. By reason of the matters pleaded in paragraph 2(g) above, MSAL is, and was during the period from 4 December 2017 until the last day of the Relevant Period (**Securities Markets Period**), required to report to a Market Operator certain “**Regulatory Data**” (as defined in r 7.4.4 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Securities Markets Rules)*) in each:
 - (a) “**Order**” (as defined in r 1.4.3 of the Securities Markets Rules) transmitted to an “**Order Book**” (as defined in r 1.4.3 of the Securities Markets Rules) of the Market Operator; and
 - (b) “**Trade Report**” (as defined in r 1.4.3 of the Securities Markets Rules) made to the Market Operator, for each side of the transaction for which MSAL acted as agent on behalf of a client, or as Principal (as defined in r 1.4.3 of the Securities Markets Rules),

including the AFSL number of the AFSL holder for each side (buy and/or sell) of an order or transaction on which:

- (c) MSAL acted as agent for an “AOP Client” (as defined in r 1.4.3 of the Securities Markets Rules) that is an AFSL holder; and
- (d) MSAL had an arrangement with the AFSL holder under which the AFSL holder was permitted to submit “Trading Messages” (as defined in r 1.4.3 of the Securities Markets Rules) into MSAL’s system as intermediary for its own clients, (the **AFSL Number Duty**).

Particulars

s 798H(1)(b) of the Corporations Act; Securities Markets Rules, rr 1.4.3 (definitions of “AOP Client”, “Principal”, “Order”, “Order Book”, “Trade Report” and “Trading Messages”), 7.4.2 and 7.4.4 (definition of “Regulatory Data”, Item 4 (Intermediary ID) in table).

B. MSAL’S SHORT SALE AND REGULATORY REPORTING PROCESS

B.1. MSAL Resources

9. During the Relevant Period, MSAL:

- (a) employed between 102 and 130 full-time equivalent employees in the period from 1 April 2013 to 31 March 2024;
- (b) had a “Middle Office Team” which comprised a team of approximately 6 to 11 full-time employees and formed part of the Markets Operations Division (**MOD**) (referred to as the **Middle Office Team** or **MOD Team**);
- (c) had a “**Technology Team**” which comprised a team of approximately 13 to 35 full-time employees;
- (d) had a “**Business Compliance Team**” which comprised a team of approximately 4 to 6 full-time employees;
- (e) had a “**Business Management Team**” which comprised a team of approximately 2 to 4 full-time employees; and

- (f) had a “Business Operational Risk Management” (**BORM Team**) which comprised a team of approximately 7 to 21 full-time employees. The BORM Team had both a Corporate Operations Group (or “**COG**”) as well as an Equities BORM team.
10. For the financial year ended 31 March 2019, MSAL derived or incurred:
- (a) total fee and commission income of approximately \$107.7 million;
 - (b) net operating income of approximately \$105.9 million;
 - (c) non-salary technology expenses of approximately \$3.2 million;
 - (d) an operating profit before income tax of approximately \$35.6 million; and
 - (e) a profit after income tax of approximately \$22.7 million.
11. For the financial year ended 31 March 2020, MSAL derived or incurred:
- (a) total fee and commission income of approximately \$105.3 million;
 - (b) net operating income of approximately \$95.9 million;
 - (c) non-salary technology expenses of approximately \$3.9 million;
 - (d) an operating profit before income tax of approximately \$23 million; and
 - (e) a profit after income tax of approximately \$16.3 million.
12. For the financial year ended 31 March 2021, MSAL derived or incurred:
- (a) total fee and commission income of approximately \$228.6 million;
 - (b) net operating income of approximately \$109.5 million;
 - (c) non-salary technology expenses of approximately \$3.9 million;
 - (d) an operating profit before income tax of approximately \$26.1 million; and
 - (e) a profit after income tax of approximately \$18.5 million.
13. For the financial year ended 31 March 2022, MSAL derived or incurred:
- (a) total fee and commission income of approximately \$335.8 million;
 - (b) net operating income of approximately \$101.5 million;

- (c) non-salary technology expenses of approximately \$5.8 million;
 - (d) an operating loss before income tax of approximately \$4.4 million; and
 - (e) a loss after income tax of approximately \$2.7 million.
14. For the financial year ended 31 March 2023, MSAL derived or incurred:
- (a) total fee and commission income of approximately \$305.7 million;
 - (b) net operating income of approximately \$86.9 million;
 - (c) non-salary technology expenses of approximately \$5.3 million;
 - (d) an operating loss before income tax of approximately \$28.2 million; and
 - (e) a loss after income tax of approximately \$19.4 million.
15. For the financial year ended 31 March 2024, MSAL derived or incurred:
- (a) total fee and commission income of approximately \$316.1 million;
 - (b) net operating income of approximately \$76.1 million;
 - (c) non-salary technology expenses of approximately \$7.5 million;
 - (d) an operating loss before income tax of approximately \$36.4 million; and
 - (e) a loss after income tax of approximately \$25.2 million.
- B.2. Short Sale Report**
16. Throughout the Relevant Period, MSAL:
- (a) compiled data on its covered short sale transactions made on each trading day into a report (**Short Sale Report**); and
 - (b) submitted the Short Sale Report to the relevant Market Operator in the manner pleaded in paragraph 7(a) above.
17. During the Relevant Period, the Short Sale Report had two parts, which distinguished between data reported for:
- (a) Principal Short Sales; and

- (b) Agency Short Sales.

18. During the Relevant Period, MSAL's Middle Office Team was:

- (a) designated as the owner of the Short Sale Report; and
- (b) responsible for submitting the Short Sale Report to the Market Operator in the manner pleaded in paragraph 7(a) above.

B.3. MSAL's Short Sale Reporting and IT policies and procedures

19. During the Relevant Period, MSAL's policy and procedure framework directed to seeking to comply with its:

- (a) Short Sale Reporting Obligations;
 - (b) further, or alternatively to paragraph 19(a), the AFSL Number Duty,
- comprised at least the policies and processes identified in **Annexure A**.

B.4. Short Sale Reporting Systems and Processes

20. During the Relevant Period, MSAL used at least the following systems to prepare and submit the Short Sale Report:

- (a) **"IT Portal"**, being MSAL's internally hosted web-based application used by various trading divisions within the Macquarie Group of companies to deliver functions including client and regulatory report generation;
- (b) **"SYNANG"**, being MSAL's post trade clearing and settlement system, which connected to the ASX Clearing House Electronic Sub-register System (**CHESS**) to clear and settle trades for Macquarie Bank Limited and was also used by MSAL to manage positions;
- (c) **"i-Broker"**, being a system used by the Macquarie Group to meet market operations and financial accounting requirements, which was also connected to CHESS and used to clear and settle trades;
- (d) **"Fidessa"**, being a front-office order management and execution platform;
- (e) **"STORM"**, being a front-office order management and hedge generation system for Macquarie Bank Limited synthetic products used from in or around May 2022;

- (f) “**Calypso**”, being a middle-office platform utilised for booking Principal equity risk; and
 - (g) “**Quantum**”, being an equity Principal risk system.
21. During the Relevant Period, the process implemented by MSAL to prepare and submit the Short Sale Report involved the following steps (**Short Sale Reporting Process**):
- (a) **SYNANG Collection:** At or around 5:00PM and 8:00PM on each trading day, details of all trades executed by MSAL on that trading day were automatically collected and imported to the IT Portal using:
 - (i) prior to around 14 June 2022, data collected from the iBroker system; and
 - (ii) from on or around 14 June 2022, data collected from the SYNANG system;
 - (b) **IT Portal Separation:** Once data had been collected and imported as pleaded in paragraph 21(a) above, the IT Portal separated data relating to principal trades from data relating to agency trades;
 - (c) **Agency Adjustments and Reconciliation:**
 - (i) The total volume of Agency Short Sales which had been separated as part of the process referred to in paragraph 21(b) was then automatically reconciled in the IT Portal against information recorded in Fidessa in relation to “high touch” agency orders;

Particulars

A “high touch” order is an order by which a client contacts a sales trader and that trader assists with the execution process.

- (ii) Once the reconciliation in the preceding sub-paragraph was completed, if necessary, the total volume of Agency Short Sales was adjusted automatically in the IT Portal to reflect the total volume of Agency Short Sales recorded in Fidessa;
- (iii) All principal trades, “booking purpose trades” and low-touch agency orders were excluded from the reconciliation process pleaded in paragraphs 21(c)(i) to 21(c)(ii) above;

Particulars

A 'booking purpose' trade was used by MSAL's back office for internal accounting and book-keeping purposes. Booking purpose trades are used by brokers to move stock from one broker account to another account internally and are not visible to other market participants. For example, this might occur in the context of correcting a client's identification on a trade, volume splitting, price changes or moving stock from one client account to another.

(d) **Principal Replay Function:**

- (i) The IT Portal then deployed a "replay function" to capture and calculate transaction information relating to principal trades for accounts designated in SYNANG as Principal accounts (**Principal Replay Function**);
- (ii) The Principal Replay Function involved the following steps:
 - (1) The IT Portal collated the data for all principal trades retrieved from SYNANG (as pleaded in paragraph 21(b) above) and sorted those trades into chronological, sequential order.
 - (2) The collated and sorted principal trades pleaded in the preceding sub-paragraph were then "replayed" in chronological order, commencing with the start-of-day positions (collected at 4am by SYNANG from the Quantum and Calypso systems), in order to calculate the gross Principal Short Sales for that trading day;
 - (3) The chronological replay of the principal trades pleaded in the preceding sub-paragraph involved those principal trades being replayed chronologically by increasing or decreasing the quantity of a security from the original or starting position as follows:
 - (A) any purchases were added to the rolling net position for Principal accounts on that trading day;
 - (B) any sales were subtracted from the rolling net position for Principal accounts on that trading day; and

- (C) the IT Portal then calculated the sum of all Principal Short Sales for that trading day;
- (e) **Manual adjustments:** MSAL's Middle Office Team made any manual adjustments in the IT Portal required to account for any other trading circumstances that:
 - (i) occurred during the trading day; and
 - (ii) had not been captured in the Short Sale Report through the steps pleaded in paragraphs 21(a) to 21(d) above;
- (f) **Final report submission:** After any manual adjustments had been made as referred to in the preceding sub-paragraph, MSAL's Middle Office team:
 - (i) extracted the final Short Sale Report from the IT Portal; and
 - (ii) uploaded and submitted the Short Sale Report to the relevant Market Operator in the manner pleaded in paragraph 7(a).

B.5. Short Sale Reporting Controls

22. At or about the times pleaded below, MSAL implemented the following controls in relation to the preparation and submission of its Short Sale Report (together, the **Short Sale Reporting Controls**):
- (a) the following controls which were intended to ensure the accuracy of the information recorded in the Short Sale Report:
 - (i) **"Trade Volume Check"**, which:
 - (1) was implemented by 14 October 2009;
 - (2) was able to be applied within the IT Portal;
 - (3) compared the total quantity of covered short sales to be reported for each security against the total quantity of all sales executed by MSAL for that security on the relevant day; and
 - (4) generated a warning alert if the total covered short sales for a particular security exceeded the total quantity of all sales for that

security, which alert was designed to prompt further investigation by the MOD Team;

(ii) **“Maker-Checker Authorisation of Manual Adjustments”**, which:

- (1) was implemented in August 2018;
- (2) was intended to ensure the accuracy of the manual adjustments pleaded in paragraph 21(e) above; and
- (3) required a member of the MOD Team, designated as a “checker”, to review and authorise each manual adjustment made to the Short Sale Report;

(iii) **“Daily Short Sell Orders Report”**, which:

- (1) was implemented in August 2019;
- (2) was intended to identify potential duplication, at a client level, of short sell reporting for “high touch” or “program trading” orders; and

Particulars

In respect of “high touch” orders, ASIC refers to and repeats the particulars to paragraph 21(c)(i) above.

A “program trading” order is where a group of orders (typically more than 5 to 10) are sent together with a common instruction. For example, this might occur where the common instruction is for orders to be traded over the day or at market close, or that all buy trades are to be completed in the morning and the sell trades are to be completed after midday.

(3) involved:

- (A) the generation of an automated email on each trading day, which listed any high touch or program trading short sell orders for the trading day and provided certain data in relation to any such orders, including the client name,

description of the security, volume of the security, and whether the order was submitted manually or electronically;

- (B) the automated email referred to in the preceding subparagraph being reviewed by the MOD Team prior to 9am the next trading day;
 - (C) the MOD Team investigating and reconciling the data if any exceptions were identified; and
 - (D) where required, the MOD team, making a manual adjustment to the total volume of securities recorded in the Short Sale Report;
- (b) the following controls which were intended to ensure that the Short Sale Report was submitted to the Market Operator in the timeframes required:
 - (i) **“MOD Process Checklist”**, which:
 - (1) was implemented in April 2015; and
 - (2) required the MOD Team physically to select the “completed” option in a web-based task manager form once the Short Sale Report had been submitted to the relevant Market Operator in the manner pleaded in paragraph 7(a);
 - (ii) **“Four-Eye Check”**, which:
 - (1) was implemented in July 2015; and
 - (2) involved a member of the MOD Team, designated as a “checker”, confirming that the Short Sale Report had been submitted on time to the relevant Market Operator in the manner pleaded in paragraph 7(a);
 - (iii) **“End of Day Sign-Off Email”**, which:
 - (1) was implemented in September 2015; and
 - (2) required the MOD Team to send a daily email to key stakeholders within MSAL together with a screenshot recording the successful

submission to the Market Operator of the Short Sale Report in the manner pleaded in paragraph 7(a); and

(iv) **“Compliance monitoring”**, which:

- (1) was implemented in June 2020; and
- (2) involved a monthly review by MSAL’s Business Compliance team of the screenshots contained in the End of Day Sign-Off Emails pleaded in paragraph 22(b)(iii) above.

- 23. Throughout the period from 14 October 2009 to August 2018, the Trade Volume Check referred in paragraph 22(a)(i) above was the only control MSAL had in place which was intended to ensure the accuracy of the information included in the Short Sale Report:
- 24. None of the Short Sale Reporting Controls pleaded in paragraph 22 above were designed to identify inaccuracies in the logic of the IT Portal used to generate the Short Sale Report.

B.6. Periodic Reviews

- 25. MSAL has identified, and it is the fact, that, during the Relevant Period, MSAL conducted the following reviews relevant to, amongst other things, its Short Sale Reporting Controls or Processes (together, the **Periodic Reviews**):
 - (a) a Risk and Control Self-Assessment in relation to MSAL’s overall regulatory reporting risk profile (**RCSA**), which:
 - (i) was conducted, on a semi-annual basis, in April and October for the years 2014 to 2023;
 - (ii) was directed towards identifying material risks arising through the performance of business activities and assessing how such risks were managed across MSAL’s business;
 - (iii) involved various teams within MSAL’s business, including the BORM Team, conducting a self-assessment of:
 - (1) material risks arising in relation to their business activities and how those risks were being managed, including through any relevant controls;

- (2) the design and operating effectiveness of certain controls implemented in relation to MSAL's regulatory reporting;
- (iv) identified, throughout the Relevant Period, the risk that MSAL might breach regulatory and/or exchange reporting requirements as a material risk;
- (v) assessed the risk that MSAL might breach regulatory and/or exchange reporting requirements as having:
 - (1) an inherent risk rating of "very high", "medium", "low" or "very low"; and
 - (2) from April 2016, a residual risk rating of "high", "medium" or "very low", having regard to certain controls identified in the relevant RCSA as having been implemented in relation to regulatory and/or exchange reporting;
- (vi) did not involve a controls assurance review of any of the Short Sale Reporting Controls; and
- (vii) prior to the identification in October 2022 of Issues 1 to 6 pleaded in paragraph 31 to 40 below, did not result in any changes being made to the Short Sale Reporting Controls or the Short Sale Reporting Process;

Particulars

The relevant RCSAs and the dates of those RCSAs are identified at pages 5 to 7 (items 7.1 to 7.42) of the letter from MSAL to ASIC dated 28 January 2025 in response to a notice issued pursuant to s 19(2) of the ASIC Act (MFR.1020.0001.0005).

- (b) a Periodic Assurance of Critical Controls, which:
 - (i) was intended to be conducted on a biennial basis;
 - (ii) during the Relevant Period, was only conducted in 2020; and
 - (iii) involved the BORM Team:

- (1) assessing the design and operating effectiveness of controls designated as “**Critical Controls**”, during the Relevant Period, which included the following Short Sale Reporting Controls:
 - (A) the Maker-Checker Authorisation of Manual Adjustments control pleaded in paragraph 22(a)(ii) above;
 - (B) the Daily Short Sell Orders Report control pleaded in paragraph 22(a)(iii) above; and
 - (C) the MOD Process Checklist control pleaded in paragraph 22(b)(ii) above;
- (2) conducting a walkthrough with the intention of determining the design effectiveness of the controls designated as Critical Controls pleaded in paragraph 25(b)(iii)(1) above; and
- (3) conducting sample testing with the intention of determining the operating effectiveness of the controls designated as Critical Controls pleaded in paragraph 25(b)(iii)(1) above;

Particulars

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

Control Assurance Final Report: ASX Short Sale Report dated July 2020 (MFR.1014.0001.0132).

- (c) an “**End to End**” Review of Short Sale Report, which:
 - (i) was conducted in or around 2023 and completed in December 2023; and
 - (ii) involved data officers in Macquarie Capital conducting a walk-through of the Short Sale Reporting Process and Short Sale Report Controls with the Report owner, and other relevant stakeholders involved in the process including the Front Office, Technology, BORM and Compliance teams, for the purpose of:

- (1) confirming that the Short Sale Reporting Process and Short Sale Report Controls complied with the Regulatory Reporting Policy pleaded at paragraphs 24 of Annexure A below);
 - (2) self-assessing the design, performance and overall effectiveness of Short Sale Report Controls; and
 - (3) confirming that designated 'critical data elements', including the gross Short Sale volume, had been mapped (meaning that they were tracked and/or documented) and that 'end-to-end' lineage for the relevant data had been documented; and
- (iii) did not result in any changes being made to MSAL's Short Sale Reporting Process or Short Sale Reporting Controls;

Particulars

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

Letter from MSAL to ASIC dated 19 August 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1011.0002.0008).

Letter from MSAL to ASIC dated 28 January 2025 in response to a notice issued pursuant to s 19(2) of the ASIC Act (MFR.1020.0001.0005).

ASX Short Sale – End to End Review Confluence page dated 5 December 2023 (MFR.1014.0001.0195).

- (d) a **“CGM GDO/COG MOD Periodic Assurance Review”**, which:
- (i) was completed in December 2021;
 - (ii) was conducted by MSAL's Corporate Operations Group MOD Team in conjunction with relevant stakeholders from the COG Operations, Equities Business and Compliance teams;

- (iii) was for the stated purpose of reviewing the Short Sale Report to ensure the reporting process design, data definition and controls were kept up-to date and remained appropriate; and
- (iv) involved an assessment of how the Regulatory Reporting Policy was implemented, in relation to:
 - (1) roles, responsibilities and accountabilities of key personnel involved in the process;
 - (2) review over interpretations and assumptions;
 - (3) documentation and understanding over data sourcing and Technology controls;
 - (4) management oversight and overall change management; and
 - (5) assurance; and
- (v) did not result in any changes being made to MSAL's Short Sale Reporting Process or Short Sale Reporting Controls.

Particulars

Letter from MSAL to ASIC dated 19 August 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1011.0002.0008).

Letter from MSAL to ASIC dated 28 January 2025 in response to a notice issued pursuant to s 19(2) of the ASIC Act (MFR.1020.0001.0005).

RR Policy Implementation Criteria (RQMT-RRO-0001186)
(MFR.1014.0001.0136)

26. None of the Periodic Reviews pleaded in paragraph 25 above involved:

- (a) any review of the design of the Short Sale Reporting Process for the purpose of:
 - (i) identifying any errors in the logic relied on to generate the Short Sale Report;

- (ii) identifying the frequency and nature of manual adjustments or interventions made during the Short Sale Reporting Process;
- (b) reviewing the quality of the output of the Short Sale Reporting Process, including by comparing all of the data included in a sample of Short Sale Reports submitted by MSAL against other data held by MSAL and/or Macquarie Group in relation to MSAL's covered short sale transactions for the same sample period for the purpose of ensuring that the data included in the Short Sale Report was correct.

B.7. AFSL Number Reporting for Orders and Trade Reports

27. During the Securities Markets Period, the process implemented by MSAL in seeking to populate the Regulatory Data required to be submitted to the Market Operator in its Orders and/or Trade Reports pursuant to the AFSL Number Duty involved at least the following steps (**Regulatory Reporting Process**):

- (a) The set-up of new client trading accounts, or changes made to existing client trading accounts, was managed through Macquarie Group's Document Approval System (**DAS**);
- (b) Information in relation to the set-up of new client trading accounts, or changes made to existing client trading accounts, was recorded by raising a request for approval in DAS containing a summary of information (**DAS Summary**) which included:
 - (i) the requester's name;
 - (ii) the relevant Macquarie Group booking entity;
 - (iii) the capacity of the client; and
 - (iv) whether the client was an intermediary and, if so, its AFSL number;
- (c) The approval process for requests submitted in DAS as pleaded in paragraph 27(b) required each of Macquarie Group's Equities Business Management and Business Compliance teams:
 - (i) to confirm that the DAS Summary included all required information; and

- (ii) to verify that relevant Regulatory Data details had been accurately recorded in MSAL's static data system (being the system used to record information in relation to trading accounts, including a client's AFSL number) which was:
 - (1) prior to 12 September 2022, the "**CDB**" static data system; and
 - (2) on and from 12 September 2022, the "**SYNREF**" static data system (following the decommissioning of the CDB static data system on 12 September 2022);
- (d) Once the first stage of the approval process pleaded in paragraph 27(c)(i) had been completed, the relevant client trading account details were created or amended in Macquarie Group's client onboarding system, "**Fenergo**";
- (e) The information recorded in Fenergo in relation to each client trading account included:
 - (i) the relevant Macquarie Group booking entity;
 - (ii) a client's AFSL number (where the client was an intermediary); and
 - (iii) the client's domicile;
- (f) The information recorded in Fenergo in relation to a client trading account was used to create or amend the profile for the relevant client in SYNREF;
- (g) Once the second stage of the approval process pleaded in paragraph 27(c)(ii) above had been completed, the client's trading account was switched to active; and
- (h) MSAL's "**Market Gateway**" (being a trading platform that was connected to the ASX and Cboe Australia markets) populated the required Regulatory Data on its Orders and Trade Reports using static data obtained from a "live" file (being a file that was automatically refreshed every 10 minutes) uploaded to the Market Gateway, which contained data extracted from:
 - (i) prior to 12 September 2022, CDB; and
 - (ii) on and from 12 September 2022, SYNREF.

Particulars

Letter from MSAL to ASIC dated 13 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1002.0001.0003).

Letter from MSAL to ASIC dated 23 December 2024 in response to a notice issued pursuant to s 19(2) of the ASIC Act (MFR.1018.0001.0005).

28. During the Securities Markets Period, MSAL:

- (a) used the “**Fidessa AMMA**” system as its Market Gateway until on or about 31 March 2023;
- (b) began transitioning to use the “**FIS**” system to replace Fidessa AMMA as its Market Gateway. As part of this transition process, parts of MSAL’s electronic execution flow were directed through FIS in the following periods:
 - (i) from 16 November 2022 to 20 December 2022;
 - (ii) from 11 January 2023 to 19 January 2023; and
 - (iii) from 7 February 2023 to 21 March 2023; and
- (c) until on or about 31 March 2023, used the Fidessa AMMA system from time to time as its Market Gateway during the process of implementing FIS to replace Fidessa AMMA.

B.8. Regulatory Reporting Controls

29. During the Securities Markets Period, MSAL implemented the following controls in relation to the Regulatory Reporting Process (together, the **Regulatory Reporting Controls**):

- (a) “**Eagle Eye Check**”, which was comprised of the following automatically generated emails :
 - (i) an email sent twice daily, at 9:00AM and 4:15PM, designed to identify any changes made to particular data fields used by the Market Gateway, including AFSL number;

- (ii) an email sent once daily at 4:15PM identifying any discrepancy between the static data uploaded to the Market Gateway and the data sent in Orders and Trade Reports; and
 - (iii) an email sent once daily at 4:15PM containing the regulatory data fields for all trades for the day, including the intermediary flag (with AFSL number), which was reviewed by the front office team for the purpose of identifying whether there may be incorrect tagging;
- (b) **“Splunk Checks”**, which involved the following series of automatic checks and reports generated at the intervals listed below:
- (i) a check run at 30 minute increments to identify changes to a static regulatory data field included in the data uploaded to the Market Gateway (a report was generated whenever a change was identified through the check);
 - (ii) a check run at 5 minute increments to identify any potential unauthorised modifications to intermediary and view codes in the data uploaded to the Market Gateway (a report was generated whenever any such potential unauthorised modifications were identified through the check);
 - (iii) a check run at 5 minute increments to identify whenever a first trade occurred for a new client account or sub-account (a report was generated whenever any such trades were identified, which was reviewed for the purposes of checking that the Regulatory Data for new clients was correctly reported);
 - (iv) a check run at 30 minute increments daily between 10AM and 4PM to identify if a “flipping issue” on the capacity data field in the data uploaded to the Market Gateway had occurred (a report was generated whenever this issue was identified); and
 - (v) an intraday report which identified any changes made to a client’s sub-account;
- (c) **“Quarterly Review”**, which involved a quarterly review and attestation by the Head of Cash ANZ Sales Trading Desk on all active accounts in relation to the capacity, origin of order and intermediary flag for each active account;

- (d) **“Manual Reconciliation Report”**, which involved a manual reconciliation report being run daily at or around 07:30AM between the data recorded in the Market Gateway, Fenargo, CDB, IRESS and FDA systems in relation to the capacity, origin of order and intermediary flag regulatory data fields;
- (e) **“Pre-trade Preventative Controls”** which were implemented for the Market Gateway in August 2018 (for Fidessa) and November 2021 (for FIS), respectively, which resulted in the Market Gateway automatically rejecting Orders or Trade Reports where:
 - (i) the client account did not exist in the static datafile pleaded in paragraph 27(h) above;
 - (ii) the origin of order field was blank; or
 - (iii) the client capacity field was blank;
- (f) **“Post-trade detective controls”**, which were comprised of:
 - (i) a daily report identifying any discrepancies between the static data system and data submitted by MSAL to a Market Operator;
 - (ii) a daily report identifying any intra-day changes to a client’s capacity or origin of order;
 - (iii) intra-day reports which identified:
 - (1) any changes to Regulatory Data relating to an MSAL trading account;
 - (2) any changes to the Intermediary ID field relating to an MSAL trading account;
 - (3) any new MSAL trading accounts that have submitted an Order or Trade Report to a Market Operator; and
 - (4) any MSAL trading account which has submitted multiple capacity designations during that trading day.

Particulars

Australian Cash Equities Account Onboarding Procedure dated August 2021 (MFR.1005.0002.4731 and MFR.1005.0001.0276).

Australian Cash Equities Account Onboarding Procedure dated June 2023 (MFR.1005.0001.0287).

Letter from MSAL to ASIC dated 13 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1002.0001.0003).

Letter from MSAL to ASIC dated 23 December 2024 in response to a notice issued pursuant to s 19(2) of the ASIC Act (MFR.1018.0001.0005).

30. None of the Regulatory Reporting Controls implemented during the Relevant Period were designed to ensure that the logic used to populate the Regulatory Data in Orders and Trade Reports had correctly identified whether or not the client had an AFSL number which was required to be included in Orders and Trade Reports.

C. ISSUES IDENTIFIED WITH MSAL'S SHORT SALE AND REGULATORY REPORTING

C.1. Issues 1 to 6

31. On 5 October 2022, MSAL identified, and it is the fact, that incorrect data had been submitted to the Market Operator in its Short Sale Reports.
32. On 2 December 2022, MSAL notified ASIC of a reportable situation in relation to the incorrect Short Sale Reports it had submitted to the Market Operator which it had identified on 5 October 2022 (**First RSR**).

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 2 December 2022 with Reference Number 304383 (MFR.0003.0001.0001).

33. By a second reportable situation report submitted by MSAL to ASIC on 31 January 2023 in relation to the issues with its Short Sale Reports identified in the First RSR (**Second RSR**), MSAL identified, and it is the fact, that the following six issues had affected Short Sale Reports submitted by MSAL during the Relevant Period:

- (a) the logic used to generate the Short Sale Report had incorrectly included duplicate “dummy fills” as actual covered short sale transactions in the Report (**Issue 1**);

Particulars

During the Relevant Period, “dummy fills” were created and used by MSAL for the purposes of providing clients with updates when orders were executed and did not represent actual short sale transactions conducted on the market.

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

- (b) the logic used to generate the Short Sale Report incorrectly truncated trade references used to calculate the volume of covered short sale transactions for the purposes of the Report, which resulted in trades with cross-references of four or more characters being excluded from the calculation of the total volume of covered short sale transactions (**Issue 2**);
- (c) the logic used to generate the Short Sale Report incorrectly included booking purpose trades executed on Cboe Australia in the calculation of MSAL’s covered short sale transactions for the purposes of the Report (**Issue 3**);
- (d) the logic used to generate the Short Sale Report incorrectly excluded “unbooked principal positions” from the process of calculating the total volume of Principal Short Sales for the purposes of the Report (**Issue 4**);

Particulars

An “unbooked principal position” refers to a trade which has been executed on a licenced exchange, but not fully entered or agreed on MSAL’s downstream trading, risk or booking systems.

- (e) the logic used to generate the Short Sale Report incorrectly excluded Principal buy trades in the execution of the Principal Replay Function pleaded in paragraph 21(d) above where a “crossing” was executed on the ASX Market where:
 - (i) the buy-side related to a Principal account; and

- (ii) the sell-side was an Agency client account which was not a short sale,

(Issue 5);

Particulars

A “crossing”, as defined by r 1.4.3 of the MIR, is a transaction in respect of which a trading participant acts:

- (a) on behalf of both buying and selling clients to that transaction; or
 - (b) on behalf of a buying or selling client on one side of that transaction and as Principal on the other side.
- (f) the logic used to generate the Short Sale Report incorrectly replayed, as part of the Principal Replay Function pleaded in paragraph 21(d) above, all principal trades on the ASX first and then all principal trades on Cboe Australia, rather than replaying all principal trades conducted on either the ASX or Cboe Australia in chronological order **(Issue 6)**.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 31 January 2023 with Reference Number 315014 (MFR.0003.0001.0019).

34. In relation to Issue 1, MSAL has identified, and it is the fact, that:

- (a) Issue 1 had occurred since the implementation of the STORM system in around May 2022;
- (b) Issue 1 resulted, during the period from 17 June 2022 to 5 October 2022, in:
 - (i) 22 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator;
 - (ii) 25 instances in which MSAL failed to report to the Market Operator the correct number of covered short sale transactions for a particular section 1020B product on the relevant trading day; and
 - (iii) a total of 6,044,016 covered short sale transactions being incorrectly reported to the Market Operator;

Particulars

Paragraph 34(b)(i):

The 22 Short Sale Reports were inaccurate because they contained one or more instances of incorrect reporting as alleged in paragraph 34(b)(ii).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Paragraph 34(b)(ii):

Each of the 25 instances involved MSAL overreporting the number of covered short sale transactions for a particular section 1020B product for the relevant trading day.

Appendix A dated 25 October 2023 (MFR.1003.0001.0019).

Paragraph 34(b)(iii):

The covered short sale transactions are identified in Appendix A dated 25 October 2023 (MFR.1003.0001.0019).

- (c) The testing conducted by MSAL prior to and/or after the implementation of the STORM system:
 - (i) was focused on the Principal component of the IT Portal calculation used to prepare the Short Sale Report;
 - (ii) did not test for all scenarios, including whether the logic used to generate the Short Sale Report recorded dummy fills as actual covered short sale transactions conducted on the market for the purposes of preparing the Report;
 - (iii) did not identify the effect of dummy fills on the Principal Replay Function;
- (d) MSAL identified Issue 1 following an investigation commenced by the Middle Office Team into a potential error in the Short Sale Reports relating to the implementation of the STORM system in around May 2022.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 31 January 2023 with Reference Number 315014 (MFR.0003.0001.0019).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

35. In relation to Issue 2, MSAL has identified, and it is the fact, that:

- (a) Issue 2 resulted, during the period from 11 December 2020 to 31 October 2022, in:
 - (i) 138 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator;
 - (ii) 560 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product on the relevant trading day; and
 - (iii) a total of 53,323,242 covered short sales being incorrectly reported to the Market Operator;

Particulars

Paragraph 35(a)(i):

The 138 Short Sale Reports were inaccurate because they contained one or more instances of incorrect reporting as alleged in paragraph 35(a)(ii).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Paragraph 35(a)(ii)

Each of the 560 instances involved MSAL underreporting or overreporting the number of covered short sales for a particular section 1020B product for the relevant trading day.

Appendix A dated 25 October 2023 (MFR.1003.0001.0019).

Paragraph 35(a)(iii)

The covered short sales are identified in Appendix A dated 25 October 2023 (MFR.1003.0001.0019).

- (b) Issue 2 arose following a change made to the logic used to generate the Short Sale Report using the IT Portal on 11 December 2020;
- (c) The change referred to in the preceding sub-paragraph included that the IT Portal logic was updated to use only the first three characters of a trading account cross-reference in order to reconcile with the parent account cross-reference;
- (d) The change to the logic referred to in paragraphs 35(a) to 35(c) above did not go through the change management process required by MSAL's IT Change Enablement Standard (pleaded in paragraph 1 of Annexure A below) due to incorrect scoping and assessment of the change;
- (e) By reason of the matters pleaded in the preceding sub-paragraph, no testing was performed prior to implementing the change to the logic referred to in paragraphs 35(b) to 35(c); and
- (f) MSAL identified Issue 2 while conducting a review of the logic used to generate the Short Sale Report in the IT Portal commenced after MSAL identified Issue 1.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 31 January 2023 with Reference Number 315014 (MFR.0003.0001.0019).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

36. In relation to Issue 3, MSAL has identified, and it is the fact, that:

- (a) Issue 3 resulted, during the period from 14 June 2022 to 9 August 2023, in:
 - (i) 71 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator;
 - (ii) 118 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product on the relevant trading day; and
 - (iii) a total of 19,310 covered short sales being incorrectly reported to the Market Operator;

Particulars

Paragraph 36(a)(i):

The 71 Short Sale Reports were inaccurate because they contained one or more instances of incorrect reporting as alleged at paragraph 36(a)(ii).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Appendix A dated 25 October 2023 (MFR.1003.0001.0019).

Paragraph 36(a)(ii):

Each of the 118 instances involved MSAL overreporting the number of covered short sales for a particular section 1020B product for the relevant trading day.

Appendix A dated 25 October 2023 (MFR.1003.0001.0019).

Paragraph 36(a)(iii):

The covered short sales are identified in Appendix A dated 25 October 2023 (MFR.1003.0001.0019).

- (b) Issue 3 arose following the transition from the iBroker to SYNANG back office systems on 14 June 2022;
- (c) MSAL conducted testing prior to the transition to SYNANG, which:
 - (i) involved feeding existing data feeds from iBroker into a SYNANG user acceptance testing (**UAT**) environment and validating the data recorded in the Short Sale Reports against the UAT environment data over a period of 3 days;
 - (ii) did not:
 - (1) test certain scenarios, including testing for the inclusion of booking purpose trade crossings executed on Cboe Australia; and
 - (2) identify Issue 3 because, unlike the iBroker system, the SYNANG system did not include an indicator for booking purpose trade crossings executed on Cboe Australia;
- (d) MSAL identified Issue 3 while conducting a review of the logic used to generate the Short Sale Report in the IT Portal after MSAL identified Issue 1.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 31 January 2023 with Reference Number 315014 (MFR.0003.0001.0019).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

37. In relation to Issue 4, MSAL has identified, and it is the fact, that:

- (a) Issue 4 resulted, during the period from 14 June 2022 to 21 December 2022, in:
 - (i) 65 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator;
 - (ii) at least 43 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product over a subset of trading days across the Relevant Period; and
 - (iii) a total of 334,725 covered short sales being incorrectly reported to the Market Operator over a subset of trading days across the Relevant Period;

Particulars

Paragraph 37(a)(i):

The 65 Short Sale Reports were inaccurate because they contained one or more instances of incorrect reporting, including the instances of misreporting alleged at paragraph 37(a)(ii) above.

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

ASIC refers to and repeats paragraphs 46 to 48 below.

Paragraph 37(a)(ii):

Each of the at least 43 instances involved MSAL underreporting or overreporting the number of covered short sales for a particular section 1020B product for the relevant trading day.

MSAL is not able to provide ASIC with complete data identifying the total number of instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product during the Relevant Period as a result of Issue 4. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

However, MSAL produced data in relation to a subset of 5 trading days across the period for which Issue 4 subsisted during the Relevant Period selected by ASIC for the purposes of analysis in relation to Issue 4: Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 22 November 2023 (NTC2321118); Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 15 February 2024 (NTC2421896); Email from ASIC to MSAL at 2:55PM on 9 September 2024 (MFR.0003.0009.0041).

Of that subset of 5 trading days analysed, there were 3 trading days on which covered short sales were incorrectly reported by reason of Issue 4, being 16 September 2022, 19 September 2022 and 28 September 2022: Appendix A dated 2 February 2024 (MFR.1007.0003.0009); Appendix A dated September 2024 (MFR.0003.0009.0025).

Paragraph 37(a)(iii):

The 334,725 covered short sales are the total number of covered short sales MSAL incorrectly reported to the Market Operator by reason of Issue 4 which occurred over 3 of the subset of 5 trading days analysed.

ASIC estimates that, during the period from 14 June 2022 to 21 December 2022, a total of between:

(a) 2,610,855; and

(b) 4,351,425

covered short sales were incorrectly reported to the Market Operator due to Issue 4: Appendix A dated 2 February 2024 (MFR.1007.0003.0009); Appendix A dated September 2024 (MFR.0003.0009.0025).

The estimate referred to in (a) above is calculated on the following basis:

- (i) Issue 4 resulted in MSAL misreporting the total number of covered short sales on 3 out of the subset of 5 sample

dates analysed (being 60% of the sample dates analysed).

- (ii) The total of 334,725 misreported covered short sales which occurred over those 3 sample dates, divided by the subset of 5 sample dates analysed, results in an average daily misreported volume (**ADMV**) of covered short sales due to Issue 4 of 66,945.00.
- (iii) Issue 4 occurred during the period 14 June 2022 to 21 December 2022, comprising a total of 65 trading days.
- (iv) Applying the 60% value referred to in (i) above to the 65 trading days referred to in (iii) above amounts to an estimated total of 39 trading days on which MSAL misreported the total number of covered short sales due to Issue 4 during the period 14 June 2022 to 21 December 2022.
- (v) The ADMV of 66,945.00 referred to in (ii) above multiplied by the 39 trading days referred to in (iv) above results in an estimated 2,610,855 covered short sales incorrectly reported to the Market Operator due to Issue 4 during the period 14 June 2022 to 21 December 2022.

The estimate referred to in (b) above is calculated by multiplying the ADMV of 66,945.00 referred to in (ii) above by the 65 trading days referred to in (iii) above, resulting in an estimated 4,351,425 covered short sales incorrectly reported to the Market Operator due to Issue 4 during the period 14 June 2022 to 21 December 2022.

ASIC refers to and repeats paragraphs 46 to 48 below.

- (b) Issue 4 arose following the change to MSAL's back-office system from iBroker to SYNANG on 14 June 2022;
- (c) Testing was conducted prior to the transition from the iBroker to SYNANG system, which:

- (i) involved feeding existing data feeds from iBroker into a SYNANG UAT environment and validating the Short Sale Reports against the UAT environment data over a period of 3 days;
- (ii) did not:
 - (1) identify Issue 4 because there were no unbooked Principal positions for the 3 days selected for the purposes of the testing pleaded in paragraph 37(c)(i);
 - (2) test certain scenarios; and
- (d) MSAL identified Issue 4 while conducting a review of the logic used to generate the Short Sale Report in the IT Portal which review was commenced after MSAL identified Issue 1.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 31 January 2023 with Reference Number 315014 (MFR.0003.0001.0019).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

38. In relation to Issue 5, MSAL has identified, and it is the fact, that:

- (a) Issue 5 resulted, during the period from approximately October 2011 to 21 December 2022, in:
 - (i) approximately 2,819 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator;
 - (ii) at least 34 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product over a subset of trading days across the Relevant Period; and

- (iii) a total of 645,159 covered short sales being incorrectly reported to the Market Operator over a subset of trading days across the Relevant Period.

Particulars

Paragraph 38(a)(i):

The approximately 2,819 Short Sale Reports were inaccurate because they contained one or more instances of incorrect reporting, including the instances of misreporting alleged at paragraph 38(a)(ii) above.

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

ASIC refers to and repeats paragraphs 46 to 48 below.

Paragraph 38(a)(ii):

Each of the at least 34 instances involved MSAL underreporting or overreporting the number of covered short sales for a particular section 1020B product for the relevant trading day.

MSAL is not able to provide ASIC with complete data identifying the total number of instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product during the Relevant Period as a result of Issue 5. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

However, MSAL produced data in relation to a subset of 32 trading days across the Relevant Period selected by ASIC for the purposes of analysis in relation to Issue 5: Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 22 November 2023 (NTC2321118); Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 15 February 2024 (NTC2421896).

Of that subset of 32 trading days analysed, there were 16 trading days on which covered short sales were incorrectly reported by reason of Issue 5, being 29 May 2015, 24 August 2015, 25 August 2015, 14 November 2017, 6 February 2018, 24 December 2018, 15 August 2019, 3 December 2019, 13 March 2020, 16 March 2020, 18 March 2020, 4 September 2020, 7 September 2020, 26 February 2021, 1 April 2021 and 4 April 2022: Appendix A dated 2 February 2024 (MFR.1007.0003.0009); Appendix A dated 15 March 2024 (MFR.1008.0001.0017).

Paragraph 38(a)(iii):

The total of 645,159 covered short sales are the total number of covered short sales MSAL incorrectly reported to the Market Operator by reason of Issue 5 which occurred on 16 of the subset of 32 trading days analysed.

ASIC estimates that, during the period from October 2011 to 21 December 2022, a total of between:

- (a) 28,417,237.83; and
- (b) 56,834,475.66

covered short sales were incorrectly reported to the Market Operator due to Issue 5: Appendix A dated 2 February 2024 (MFR.1007.0003.0009); Appendix A dated 15 March 2024 (MFR.1008.0001.0017).

The estimate referred to in (a) above is calculated on the following basis:

- (i) Issue 5 caused misreporting on 16 out of the subset of 32 sample dates analysed (being 50% of the sample dates analysed).
- (ii) The total of 645,159 misreported covered short sales which occurred over those 16 sample dates, divided by the subset of 32 sample dates analysed, results in an ADMV of covered short sales due to Issue 5 of 20,161.21875.

- (iii) Issue 5 occurred during the period October 2011 to 21 December 2022, comprising a total of 2,819 trading days.
- (iv) Applying the 50% value referred to in (i) above to the 2,819 trading days referred to in (iii) above amounts to an estimated total of 1,409.5 trading days on which MSAL misreported the total number of covered short sales due to Issue 5.
- (v) The ADMV of 20,161.21875 referred to in (ii) above multiplied by the 1,409.5 trading days referred to in (iv) above results in an estimated 28,417,237.83 covered short sales incorrectly reported to the Market Operator due to Issue 5.

The estimate referred to in (b) above is calculated by multiplying the ADMV of 20,161.21875 referred to in (ii) above by the 2,819 trading days referred to in (iii) above, resulting in an estimated 56,834,475.66 covered short sales incorrectly reported to the Market Operator due to Issue 5.

ASIC refers to and repeats paragraphs 46 to 48 below.

- (b) MSAL has been unable to identify why the logic which resulted in Issue 5 existed in the IT Portal report;
- (c) MSAL identified Issue 5 while conducting a review of the logic used to generate the Short Sale Report in the IT Portal, which review was commenced after MSAL identified Issue 1.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 31 January 2023 with Reference Number 315014 (MFR.0003.0001.0019).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

39. In relation to Issue 6, MSAL has identified, and it is the fact, that:

- (a) Issue 6 resulted, during the period from October 2011 to 21 December 2022, in:
 - (i) approximately 2,819 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator;
 - (ii) at least 123 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product over a subset of trading days across the Relevant Period; and
 - (iii) a total of 1,692,008 covered short sales being incorrectly reported to the Market Operator over a subset of trading days across the Relevant Period;

Particulars

Paragraph 39(a)(i):

The approximately 2,819 Short Sale Reports were inaccurate because they contained one or more instances of incorrect reporting, including the instances of misreporting alleged at paragraph 39(a)(ii) above.

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

ASIC refers to and repeats paragraphs 46 to 48 below.

Paragraph 39(a)(ii):

Each of the at least 123 instances involved MSAL underreporting or overreporting the number of covered short sales for a particular section 1020B product for the relevant trading day.

MSAL is not able to provide ASIC with complete data identifying the total number of instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product during the Relevant Period as a

result of Issue 6. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

However, MSAL produced data in relation to a subset of 32 trading days across the Relevant Period selected by ASIC for the purposes of analysis in relation to Issue 6: Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 22 November 2023 (NTC2321118); Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 15 February 2024 (NTC2421896).

Of that subset of 32 trading days analysed, there were 23 trading days on which covered short sales were incorrectly reported by reason of Issue 6, being 29 May 2015, 15 May 2015, 3 January 2017, 6 February 2018, 19 April 2018, 2 January 2019, 12 June 2019, 15 August 2019, 3 December 2019, 12 March 2020, 13 March 2020, 16 March 2020, 18 March 2020, 19 March 2020, 7 September 2020, 26 February 2021, 1 April 2021, 17 September 2021, 2 February 2022, 4 April 2022, 18 July 2022, 19 July 2022 and 16 September 2022: Appendix A dated 2 February 2024 (MFR.1007.0003.0009); Appendix A dated 15 March 2024 (MFR.1008.0001.0017).

Paragraph 39(a)(iii):

The total of 1,692,008 covered short sales are the total number of covered short sales MSAL incorrectly reported to the Market Operator by reason of Issue 6 which occurred on 23 of the subset of 32 trading days analysed.

ASIC estimates that, during the period from October 2011 to 21 December 2022, a total of between:

- (a) 107,133,518.26; and
- (b) 149,055,329.75

covered short sales were incorrectly reported to the Market Operator due to Issue 6: Appendix A dated 2 February 2024 (MFR.1007.0003.0009); Appendix A dated 15 March 2024 (MFR.1008.0001.0017).

The estimate referred to in (a) above is calculated on the following basis:

- (i) Issue 6 caused misreporting on 23 out of the subset of 32 sample dates analysed (being 71.875% of the sample dates analysed).
- (ii) The total of 1,692,008 misreported covered short sales which occurred over those 23 sample dates, divided by the subset of 32 sample dates analysed, results in an ADMV of covered short sales due to Issue 6 of 52,875.25.
- (iii) Issue 6 occurred during the period October 2011 to 21 December 2022, comprising a total of 2,819 trading days.
- (iv) Applying the 71.875% value referred to in (i) above to the 2,819 trading days referred to in (iii) above amounts to an estimated total of 2,026.15625 trading days on which MSAL misreported the total number of covered short sales due to Issue 6.
- (v) The ADMV of 52,875.25 referred to in (ii) above multiplied by the 2,026.15625 trading dates referred to in (iv) above results in an estimated 107,133,518. 26 covered short sales incorrectly reported to the Market Operator due to Issue 6.

The estimate referred to in (b) above is calculated by multiplying the ADMV of 52,875.25 referred to in (ii) above by the 2,819 trading days referred to in (iii) above, resulting in an estimated 149,055,329.75 covered short sales incorrectly reported to the Market Operator due to Issue 6.

ASIC refers to and repeats paragraphs 46 to 48 below.

- (b) Issue 6 arose from the time MSAL connected to the Cboe Australia market as a secondary market in October 2011;
- (c) The causes of Issue 6 included at least the following:

- (i) MSAL's failure to account for differences in the ASX and Cboe Australia date and time stamp identifier formats; and
 - (ii) a coding error introduced to the IT Portal as a result of inadequate testing and change management relating to the introduction of the Cboe Australia market;
- (d) MSAL identified Issue 6 while conducting a review of the logic used to generate the Short Sale Report in the IT Portal which review was commenced after MSAL identified Issue 1.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 31 January 2023 with Reference Number 315014 (MFR.0003.0001.0019).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

40. In relation to Issues 1 to 6, MSAL has identified, and it is the fact, that the root causes of Issues 1 to 6 included at least:

- (a) MSAL's failure:

- (i) to follow appropriate change control processes; and
- (ii) appropriately to document relevant changes,

in relation to changes impacting the Short Sale Report and/or the logic used to generate the Short Sale Report in the IT Portal;

- (b) further, or alternatively, to paragraph 40(a), MSAL's failure to conduct adequate pre-implementation testing prior to implementing changes impacting the Short Sale Report and/or the logic used to generate the Short Sale Report in IT Portal;

- (c) further, or alternatively, to paragraphs 40(a) to (b), the underlying system logic and/or data mapping in the IT Portal not being fit for purpose;
- (d) further, or alternatively, to paragraphs 40(a) to (c), MSAL having a lack of detective controls in place in relation to identifying errors in the Short Sale Report.

Particulars

Letter from MSAL to ASIC dated 25 September 2024 in response to a notice issued pursuant to s 37(9) of the ASIC Act (MFR.0003.0011.0003).

Macquarie OpenPages Incident Report in relation to Incident ID INC-0076893 dated 13 January 2023 (MFR.1006.0002.5237).

Internal MSAL email on 23 November 2022 at 6:27PM titled "Re: Escalation - ASX Short Sale Reporting to the ASX" (MFR.1006.0002.3802).

Internal MSAL email on 6 February 2023 at 11:26PM titled "Board RiskCo Reporting - MOD/Equities Short Sale Reporting Incident" (MFR.1006.0003.3292) attaching document titled "Short Sell Report incident" (MFR.1006.0003.3294).

Internal MSAL email on 17 February 2023 at 8:51AM titled "RE: PT/Cash Short Sell Trades - 20230216 - 1 breaks" (MFR.1006.0003.1914).

Internal MSAL email on 19 June 2023 at 4:46PM titled "Short Sale Reporting - MBL EDT Trading" (MFR.1006.0004.2620).

Internal MSAL email on 19 June 2023 at 4:56PM titled "RE: Short Sale Reporting - MBL EDT Trading" (MFR.2001.0003.2840).

C.2. Issues 7 to 9

41. Following inquiries by ASIC, by an email to ASIC on or around 19 January 2024, MSAL identified, and it is the fact, that the following further three issues affected the preparation of its Short Sale Reports:
 - (a) during the period from 11 December 2009 to 14 February 2024, the Short Sale Reports submitted by MSAL to the Market Operator did not always include:

- (i) Principal market crossing trades completed after 5:00PM;
 - (ii) Agency short sale market crossing trades completed after 5:00PM; or
 - (iii) amendments made to Agency trades in Fidessa after 5:00PM,
- (Issue 7);**

Particulars

In respect of market crossing trades, ASIC refers to and repeats the particulars paragraph 33(e)(ii) above.

- (b) during the period from 11 December 2009 to 2 February 2023, the Short Sale Reports submitted by MSAL to the Market Operator were affected by an incorrect automatic adjustment process that was applied in the IT Portal when a manual intraday booking was made by the MOD Team in Fidessa for a short sell “direct market access” **(DMA)** trade **(Issue 8)**;

Particulars

A direct market access **(DMA)** trade is where an order or orders is or are entered on the exchange directly via a broker’s systems, without the assistance of a sales trader.

- (c) during the period from 11 December 2009 to 15 May 2023, some of the Short Sale Reports submitted by MSAL to the Market Operator were extracted prior to the completion of the data extraction process in the IT Portal pleaded in paragraph 21(a) to (f) above and, accordingly, were incomplete **(Issue 9)**.

Particulars

Email from MSAL to ASIC titled “RE: MSAL s33 Notice Response Due Date - Short Sale RSR [SEC=OFFICIAL]” sent at around 03:50PM on 19 January 2024 (MFR.1007.0002.0001) attaching an Excel spreadsheet titled “Appendix A to MSAL S912C Notice NTC2320200 Updated 19012024.xlsx” (MFR.1007.0002.0008).

42. In relation to Issue 7, MSAL has identified, and it is the fact, that:

- (a) MSAL has been unable to verify the exact number of Short Sale Reports impacted by Issue 7 due to the length of time during which Issue 7 subsisted;
- (b) Issue 7 resulted, during the period from 11 December 2009 to 14 February 2024, in:
 - (i) at least 4 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator over a subset of trading days across the Relevant Period;
 - (ii) at least 71 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product over a subset of trading days across the Relevant Period;
 - (iii) a total of 5,634,621 covered short sales being incorrectly reported to the Market Operator over a subset of trading days across the Relevant Period;

Particulars

Paragraph 42(b)(i):

At least 4 Short Sale Reports were inaccurate because they contained one or more instances of incorrect reporting, including the instances of misreporting alleged at paragraph 42(b)(ii) above.

Appendix A dated 26 July 2024 (MFR.1011.0001.0011).

MSAL is not able to provide ASIC with complete data identifying the total number of inaccurate Short Sale Reports submitted by MSAL to the Market Operator during the Relevant Period as a result of Issue 7. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

Paragraph 42(b)(ii):

Each of the at least 71 instances involved MSAL underreporting the number of covered short sales for a particular security for the relevant trading day.

MSAL is not able to provide ASIC with complete data identifying the total number of instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product during the Relevant Period as a result of Issue 7. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

However, MSAL produced data in relation to a subset of 32 trading days across the Relevant Period selected by ASIC for the purposes of analysis in relation to Issue 7: Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 19 June 2024 (NTC2423534).

Of that subset of 32 trading days analysed, there were 4 trading days on which covered short sales were incorrectly reported by reason of Issue 7, being 14 November 2017, 15 August 2019, 12 March 2020 and 18 March 2020: Appendix A dated 26 July 2024 (MFR.1011.0001.0011).

Paragraph 42(b)(iii):

The total of 5,634,621 covered short sales are the total number of covered short sales MSAL incorrectly reported to the Market Operator by reason of Issue 7 which occurred on 4 the subset of 32 trading days analysed.

ASIC estimates that, during the period from 11 December 2009 to 14 February 2024, a total of between:

(a) 79,633,042.10; and

(b) 637,064,336.81

covered short sales were incorrectly reported to the Market Operator due to Issue 7: Appendix A dated 26 July 2024 (MFR.1011.0001.0011).

The estimate referred to in (a) above is calculated on the following basis:

- (i) Issue 7 caused misreporting on 4 out of the subset of 32 sample dates analysed (being 12.5% of the sample dates analysed).
- (ii) The total of 5,634,621 misreported covered short sales which occurred over those 4 sample dates, divided by the subset of 32 dates analysed, results in an ADMV of covered short sales due to Issue 7 of 176,081.90625.
- (iii) Issue 7 occurred during the period 11 December 2009 to 14 February 2024, comprising a total of 3,618 trading days.
- (iv) Applying the 12.5% value referred to in (i) above to the 3,618 trading days referred to in (iii) above amounts to an estimated total of 452.25 trading days on which on which MSAL misreported the total number of covered short sales due to Issue 7.
- (v) The ADMV of 176,081.90625 referred to in (ii) above multiplied by the 452.25 trading dates referred to in (iv) above results in an estimated 79,633,042.10 covered short sales incorrectly reported to the Market Operator due to Issue 7.

The estimate referred to in (b) above is calculated by multiplying the ADMV of 176,081.90625 referred to in (ii) above by the 3,618 trading days referred to in (iii) above, resulting in an estimated 637,064,336.81 covered short sales incorrectly reported to the Market Operator due to Issue 7.

ASIC refers to and repeats paragraphs 46 to 48 below.

- (c) the cause of Issue 7 included MSAL's Short Sale Reporting Process relying on the data automatically extracted from SYNANG and Fidessa in relation to

Principal and Agency trades at 5:00PM only, rather than relying on the data extracted at both 5:00PM and 8:00PM;

- (d) The data extracted from SYNANG and Fidessa at 8:00PM would have captured the effect of any late market cross trades and/or late amendments made to trades after 5:00PM;
- (e) MSAL identified Issue 7 while it was undertaking work to remediate Issues 1 to 6.

Particulars

Email from MSAL to ASIC titled “RE: MSAL s33 Notice Response Due Date - Short Sale RSR [SEC=OFFICIAL]” sent at around 03:50PM on 19 January 2024 (MFR.1007.0002.0001) attaching an Excel spreadsheet titled “Appendix A to MSAL S912C Notice NTC2320200 Updated 19012024.xlsx” (MFR.1007.0002.0008).

Letter from MSAL to ASIC dated 28 March 2024 in relation to the Reportable Situation Reports with Reference Numbers s 304383 and 315014 (MFR.0003.0001.0051).

43. In relation to Issue 8, MSAL has identified, and it is the fact, that:

- (a) the incorrect automatic adjustment that occurred in the IT Portal (being the adjustment pleaded in paragraph 41(b) above):
 - (i) involved the total reported Short Sale volume being automatically adjusted downward by the equivalent amount of the manual intraday booking made by MSAL’s MOD Team for a short sell DMA trade;
 - (ii) occurred as a result of the Agency Adjustments and Reconciliation pleaded in paragraph 21(c) above excluding DMA trading and removing any agency manual DMA adjustments, including for covered short sale orders, from the total calculated by IT Portal for the relevant trading day; [MFR.1007.0002.0001, p 2; MFR.0003.0001.0051, p3]

- (b) Issue 8 occurred during the period from 11 December 2009 to 2 February 2023;
- (c) MSAL has been unable to verify the exact number of Short Sale Reports impacted by Issue 8 due to the length of time during which that Issue subsisted;
- (d) Issue 8 resulted, during the period from 11 December 2009 to 2 February 2023, in:
 - (i) at least 3 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator over a subset of trading days across the Relevant Period;
 - (ii) at least 3 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product over a subset of trading days across the Relevant Period; and
 - (iii) a total of 159,628 covered short sales being incorrectly reported to the Market Operator over a subset of trading days across the Relevant Period;

Particulars

Paragraph 43(d)(i):

At least 3 Short Sale Reports were inaccurate because they each contained an instance of incorrect reporting, including the instances of misreporting alleged at paragraph 43(d)(ii) above.

Appendix A dated September 2024 (MFR.0003.0009.0040).

MSAL is not able to provide ASIC with complete data identifying the total number of inaccurate Short Sale Reports submitted by MSAL to the Market Operator during the Relevant Period as a result of Issue 8. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

Paragraph 43(d)(ii):

Each of the at least 3 instances involved MSAL underreporting the number of covered short sales for a particular section 1020B product for the relevant trading day.

MSAL is not able to provide ASIC with complete data identifying the total number of instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product during the Relevant Period as a result of Issue 8. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

However, MSAL produced data in relation to a subset of 35 trading days across the Relevant Period selected by ASIC for the purposes of analysis in relation to Issue 8: Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 19 June 2024 (NTC2423534); Email from MSAL to ASIC at 4:20PM on 13 September 2024 (MFR.0003.0009.0041); Email from ASIC to MSAL at 1:44PM on 18 September 2024 (MFR.0003.0009.0041).

Of that subset of 35 trading days, there were 3 trading days on which covered short sales were incorrectly reported by reason of Issue 8, being 8 April 2022, 21 April 2022 and 27 April 2022: Appendix A dated September 2024 (MFR.0003.0009.0040).

Paragraph 43(d)(iii):

The total of 159,628 covered short sales are the total number of covered short sales MSAL incorrectly reported to the Market Operator by reason of Issue 8 which occurred on 3 of the subset of 35 trading days analysed.

ASIC estimates that, during the period from 11 December 2009 to 2 February 2023, a total of between:

- (a) 1,311,946.70; and
- (b) 15,306,044.80

covered short sales were incorrectly reported to the Market Operator due to Issue 8: Appendix A dated September 2024 (MFR.0003.0009.0040).

The estimate referred to in (a) above is calculated on the following basis:

- (i) Issue 8 caused misreporting on 3 out of the subset of 35 sample dates analysed (being 8.5714286% of the sample dates analysed).
- (ii) The total of 159,628 misreported covered short sales which occurred over those 3 sample dates, divided by the subset of 35 dates analysed, results in an ADMV of covered short sales due to Issue 8 of 4,560.80.
- (iii) Issue 8 occurred during the period 11 December 2009 to 2 February 2023, comprising a total of 3,356 trading days.
- (iv) Applying the 8.5714286% value referred to in (i) above to the 3,356 trading days referred to in (iii) above amounts to an estimated total of 287.6571429 trading days on which MSAL misreported the total number of covered short sales Issue 8.
- (v) The ADMV of 4,560.80 referred to in (ii) above multiplied by the 287.6571429 trading days referred to in (iv) above results in an estimated 1,311,946.70 covered short sales incorrectly reported to the Market Operator due to Issue 8.

The estimate referred to in (b) above is calculated by multiplying the ADMV of 4,560.80 referred to in (ii) above by the 3,356 trading days referred to in (iii) above, resulting in an estimated 15,306,044.80 covered short sales incorrectly reported to the Market Operator due to Issue 8.

ASIC refers to and repeats paragraphs 46 to 48 below.

- (e) MSAL identified Issue 8 while it was undertaking work to remediate Issues 1 to 6.

Particulars

Email from MSAL to ASIC titled "RE: MSAL s33 Notice Response Due Date - Short Sale RSR [SEC=OFFICIAL]" sent at around 03:50PM on 19 January 2024 (MFR.1007.0002.0001) attaching an Excel spreadsheet titled "Appendix A to MSAL S912C Notice NTC2320200 Updated 19012024.xlsx" (MFR.1007.0002.0008).

Letter from MSAL to ASIC dated 28 March 2024 in relation to the Reportable Situation Reports with Reference Numbers s 304383 and 315014 (MFR.0003.0001.0051).

44. In relation to Issue 9, MSAL has identified, and it is the fact, that:
- (a) MSAL has been unable to verify the exact number of Short Sale Reports impacted by Issue 9 due to the length of time during which that Issue subsisted;
 - (b) Issue 9 resulted, during the period from 11 December 2009 to 15 May 2023, in:
 - (i) at least 1 inaccurate Short Sale Report being submitted by MSAL to the Market Operator over a subset of trading days across the Relevant Period;
 - (ii) at least 182 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product over a subset of trading days across the Relevant Period; and
 - (iii) a total of 5,942,129 covered short sales being incorrectly reported to the Market Operator over a subset of trading days across the Relevant Period;

Particulars

Paragraph 44(b)(i):

At least 1 Short Sale Report was inaccurate because it contained instances of incorrect reporting, including the instances of misreporting alleged at paragraph 44(b)(ii) above.

Appendix A dated 26 July 2024 (MFR.1011.0001.0011).

MSAL is not able to provide ASIC with complete data identifying the total number of inaccurate Short Sale Reports submitted by MSAL to the Market Operator during the Relevant Period as a result of Issue 9. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

Paragraph 44(b)(ii):

Each of the at least 182 instances involved MSAL underreporting the number of covered short sales for a particular section 1020B product for the relevant trading day.

MSAL is not able to provide ASIC with complete data identifying the total number of instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product during the Relevant Period as a result of Issue 9. In this regard, ASIC refers to and repeats paragraphs 46 to 48 below.

However, MSAL produced data in relation to a subset of 32 trading days across the Relevant Period selected by ASIC for the purposes of analysis in relation to Issue 9: Notice issued by ASIC to MSAL pursuant to section 912C(1) of the Corporations Act dated 19 June 2024 (NTC2423534).

Of that subset of 32 trading days, there was 1 trading day on which covered short sales were incorrectly reported by reason of Issue 9, being 3 January 2017: Appendix A dated 26 July 2024 (MFR.1011.0001.0011).

Paragraph 44(b)(iii):

The total of 5,942,129 covered short sales are the total number of covered short sales MSAL incorrectly reported to the Market Operator by reason of Issue 9 which occurred on 1 of the subset of 32 trading days analysed.

ASIC estimates that, during the period from 11 December 2009 to 15 May 2023, a total of between:

- (a) 19,874,796.70; and
- (b) 635,993,494.53

covered short sales were incorrectly reported to the Market Operator due to Issue 9: Appendix A dated 26 July 2024 (MFR.1011.0001.0011).

The estimate referred to in (a) above is calculated on the following basis:

- (i) Issue 9 caused misreporting on 1 out of the subset of 32 sample dates analysed (being 3.125% of the sample dates analysed).
- (ii) The total of 5,942,129 misreported covered short sales which occurred on that 1 sample date, divided by the subset of 32 dates analysed, results in an ADMV of covered short sales due to Issue 9 of 185,691.53125.
- (iii) Issue 9 occurred during the period 11 December 2009 to 15 May 2023, comprising a total of 3,425 trading days.
- (iv) Applying the 3.125% value referred to in (i) above to the 3,425 trading days referred to in (iii) above amounts to an estimated total of 107.03125 trading days on which MSAL misreported the number of covered short sales due to Issue 9.
- (v) The ADMV of 185,691.53125 referred to in (ii) above multiplied by the 107.03125 trading days referred to in (iv) above results in an estimated 19,874,796.70 covered short sales incorrectly reported to the Market Operator due to Issue 9.

The estimate referred to in (b) above is calculated by multiplying the ADMV of 185,691.53125 referred to in (ii) above by the 3,425 trading days referred to in (iii) above, resulting in an estimated 635,993,494.53 covered short sales incorrectly reported to the Market Operator due to Issue 9.

ASIC refers to and repeats paragraphs 46 to 48 below.

- (c) MSAL identified Issue 9 while it was undertaking work to remediate Issues 1 to 6.

Particulars

Email from MSAL to ASIC titled "RE: MSAL s33 Notice Response Due Date - Short Sale RSR [SEC=OFFICIAL]" sent at around 03:50PM on

19 January 2024 (MFR.1007.0002.0001) attaching an Excel spreadsheet titled "Appendix A to MSAL S912C Notice NTC2320200 Updated 19012024.xlsx" (MFR.1007.0002.0008).

Letter from MSAL to ASIC dated 28 March 2024 in relation to the Reportable Situation Reports with Reference Numbers s 304383 and 315014 (MFR.0003.0001.0051).

45. The root causes of Issues 7 to 9 included at least:
- (a) the underlying system logic and/or data mapping in the IT Portal not being fit for purpose;
 - (b) further, or alternatively, to paragraph 45(a), inadequate process design for the Short Sale Reporting Process;
 - (c) further, or alternatively, to paragraphs 45(a) and 45(b), MSAL's failure to implement appropriate detective controls to identify errors in the Short Sale Report.

Particulars

ASIC refers to and repeats paragraphs 41 to 44 above.

C.3. Total inaccurate Short Sale Reports and instances of failures to report correct number of section 1020B products

46. MSAL has identified, and it is the fact, that in respect of Issues 4 to 9, MSAL is unable to provide ASIC with complete data identifying the total number of:
- (a) inaccurate Short Sale Reports submitted by MSAL to the Market Operator as referred to in paragraphs 37(a)(i), 38(a)(i), 39(a)(i), 42(a), 42(b)(i), 43(c), 43(d)(i) and 44(a) and 44(b)(i) above;
 - (b) instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product on the

relevant trading days as referred to in paragraphs 37(a)(ii), 38(a)(ii), 39(a)(ii), 42(b)(ii), 43(d)(ii), 44(b)(ii) above; and/or

- (c) covered short sales incorrectly reported to the Market Operator on the relevant trading days as referred to in paragraphs 37(a)(iii), 38(a)(iii), 39(a)(iii), 42(b)(iii), 43(d)(iii) and 44(b)(iii) above.

47. Notwithstanding the matters pleaded in the preceding paragraph, MSAL has identified, and it is the fact, that during the Relevant Period there were:

- (a) at least 1,159 instances in which MSAL failed to report to the Market Operator the correct number of short sales for a particular security on the relevant trading day as a result of Issues 1 to 9; and
- (b) at least 73,794,838 short sales that MSAL failed to correctly report to the Market Operator as a result of Issues 1 to 9.

48. The total number of instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product on the relevant trading day, and the total number of short sales that MSAL failed to correctly report to the Market Operator, as a result of Issues 1 to 9 are likely to be higher than the figures pleaded in paragraph 47 above because MSAL has identified, and it is the fact, that:

- (a) Issues 5 and 6 resulted in approximately 2,819 inaccurate Short Sale Reports being submitted by MSAL during the period from October 2011 to 21 December 2022;
- (b) Issue 7 occurred during the period from 11 December 2009 to 14 February 2024, being a period totalling approximately three years longer than the period associated with Issues 5 and 6;
- (c) Issue 8 occurred during the period from 11 December 2009 to 2 February 2023, being a period totalling approximately two years longer than the period associated with Issues 5 and 6; and
- (d) Issue 9 occurred during the period from 11 December 2019 to 15 May 2023, being a period totalling approximately five months longer than the period associated with Issues 5 and 6.

Particulars

ASIC repeats the particulars to paragraphs 37(a)(iii), 38(a)(iii), 39(a)(iii), 42(b)(iii), 43(d)(iii) and 44(b)(iii) above.

Based on the total covered short sale transactions incorrectly reported to the Market Operator for each of Issues 1 to 3 pleaded in paragraphs 34(b)(iii), 35(a)(iii), 36(a)(iii) above, and ASIC's estimates of the total covered short sale transactions incorrectly reported to the Market Operator for each of Issues 4 to 9 referred to in the particulars to paragraphs 37(a)(iii), 38(a)(iii), 39(a)(iii), 42(b)(iii), 43(d)(iii) and 44(b)(iii) above, ASIC estimates that, by reason of Issues 1 to 9, MSAL failed to correctly report between 298,367,964.59 and 1,557,991,674.55 short sales to the Market Operator during the Relevant Period.

C.4. Issue 10

49. By a further reportable situation report lodged by MSAL with ASIC on 19 May 2023 (**Third RSR**), MSAL identified that MSAL had failed to provide the AFSL number (intermediary ID) for a total of 1,138,748 Trade Reports and/or Orders provided to the Market Operator during the period from 16 November 2022 to 21 March 2023 (**Issue 10**).
50. Between 8 August 2023 and 24 August 2023, ASIC requested further information from MSAL in relation to the Third RSR and the Trade Reports and/or Orders affected by Issue 10.

Particulars

Email correspondence exchanged between ASIC and MSAL on 8, 11, 14, 17, 23 and 24 August 2023 (MFR.1006.0004.2098).

51. By further correspondence provided to ASIC on 24 August 2023 and 7 March 2025, MSAL identified, and it is the fact that:

- (a) the true number of Orders affected by Issue 10 and provided to the Market Operator during the period from 16 November 2022 to 21 March 2023 is 633,680; and
- (b) although there were a total of 524,393 Trades affected by Issue 10, none of the Trade Reports provided to the Market Operator during the period from 16 November 2022 to 21 March 2023 were affected by Issue 10.

Particulars

Email correspondence exchanged between ASIC and MSAL on 24 August 2023 and attachments (MFR.0003.0022.0020 attaching MFR.0003.0022.0026; MFR.0003.0022.0027 attaching MFR.0003.0022.0033)

Email correspondence exchanged between MSAL and ASIC on 25 August 2023 and attachment (MFR.0003.0022.0034; MFR.0003.0022.0041). Letter from MSAL to ASIC dated 7 March 2025 in response to email correspondence issued by ASIC pursuant to s 37(9) of the ASIC Act (MFR.0003.0020.0007).

The original figure of 1,138,748 Trade Reports and/or Orders identified by MSAL in the Third RSR inadvertently included Trade Reports and/or Orders in relation to a principal account which did not require an intermediary ID to be reported.

52. The discrepancy between:

- (a) the true number of Orders affected by Issue 10; and
- (b) the number of Orders and/or Trade Reports originally identified in the Third RSR as being affected by Issue 10,

was identified by MSAL as part of re-validating the underlying client data in the course of responding to further requests for information made by ASIC in relation to the Third RSR and the Trade Reports and/or Orders affected by Issue 10.

Particulars

Email correspondence exchanged between MSAL and ASIC at approximately 10:00PM and 10:01PM (and attachment) on 24 August 2023 (MFR.1006.0004.2098; MFR.1006.0004.2107).

53. In relation to Issue 10, MSAL has identified, and it is the fact, that:

- (a) the relevant Orders or Trades affected by Issue 10 related to three accounts for two of MSAL's clients;

Particulars

The relevant accounts were held by:

1. Hong Kong and Shanghai Banking Corporation Limited (**HSBC**): AFSL number – 301737; and
2. BNP Paribas Hong Kong: AFSL number – 238043.

- (b) Issue 10 arose following changes made in relation to the extraction of data from the SYNREF system, which involved:

- (i) incorrect logic being applied when extracting from SYNREF the Regulatory Data field used by FIS (being MSAL's market gateway) to populate MSAL's Orders and Trade Reports;
- (ii) the logic referred to in the preceding sub-paragraph:
 - (1) not requiring the identity of the booking entity to be confirmed, including by checking and populating the client's AFSL number; and
 - (2) being configured in a manner which meant that:
 - (A) the client's booking domicile was checked; and
 - (B) where the domicile was outside of Australia, by default no AFSL number was included;

- (c) Issue 10 arose during a transition period in which MSAL was implementing FIS as its market gateway to replace the Fidessa AMMA market gateway that had previously been used (as pleaded in paragraph 28 above);

- (d) In relation to testing prior to the implementation of the FIS gateway:
 - (i) MSAL had conducted testing of scenarios that could affect the Regulatory Data fields required to be provided; and
 - (ii) the testing referred to in the preceding sub-paragraph did not include verifying the inclusion of the AFSL number for clients domiciled outside Australia;
- (e) MSAL identified Issue 10 while managing and reviewing a client static data change for the trading account of HSBC, relating to its Smart Order Routing preferences.

Particulars

Reportable Situation Report submitted by MSAL to ASIC on 19 May 2023 with Reference Number 330370 (MFR.0003.0001.0056).

Letter from MSAL to ASIC dated 13 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1002.0001.0003).

54. The root causes of Issue 10 included at least:

- (a) MSAL's failure:
 - (i) to follow appropriate change control processes; and
 - (ii) appropriately to document relevant changes,

in relation to changes impacting systems and/or the logic relied on to generate the Trade Reports and/or Orders as part of the Regulatory Reporting Process;
- (b) further, or alternatively, to paragraph 54(a), MSAL's failure to conduct adequate pre-implementation testing prior to implementing changes impacting systems and/or the logic relied on to generate the Trade Reports and/or Orders as part of the Regulatory Reporting Process;
- (c) further, or alternatively, to paragraphs 54(a) to (b), MSAL's failure to implement appropriate detective controls to identify errors in its Trade Reports and/or Orders as part of the Regulatory Reporting Process.

Particulars

Paragraphs 54(a) and 0

Letter from MSAL to ASIC dated 28 January 2025 in response to a notice of direction issued pursuant to s 19(2) of the ASIC Act, at page 28 (response to Item 18) (MFR.1020.0001.0005).

ASIC also refers to and repeats paragraphs 53(b) to 53(e) above.

Paragraph 54(c)

ASIC refers to and repeats paragraphs 53(b) to 53(e) above.

D. HISTORICAL REPORTING INCIDENTS

D.1. Historical short sale reporting incidents

55. In addition to Issues 1 to 9 set out above and the related contraventions alleged in this statement of claim, MSAL reported further incidents in relation to its short sale reporting to ASIC on:

- (a) 10 July 2015 (**2015 Incident**); and
- (b) 1 July 2019, 17 January 2020 and 6 March 2020 (together, referred to as the **2019 Incident**);

Particulars

Letter from MSAL to ASIC dated 10 July 2015 (MFR.0003.0005.0001).

Letter from MSAL to ASIC dated 1 July 2019 (MFR.1006.0004.4745).

Email correspondence from MSAL to ASX on 17 January 2020 (MFR.1006.0003.2899 at pp.2902-2903).

Email correspondence from MSAL to ASX on 6 March 2020
(MFR.1006.0003.2899 at p.2899).

56. In relation to the 2015 Incident:

- (a) MSAL has identified, and it is the fact, that, on 38 dates between 14 January 2015 and 23 June 2015, MSAL lodged with the ASX a Short Sale Report in which it had certified that MSAL had a “Nil Short Sale Position”, notwithstanding that it had lodged, on each of those dates, a Short Sale Report;
- (b) MSAL has identified, and it is the fact, that, on each of the dates alleged in paragraph 56(a) above, MSAL:
 - (i) uploaded a Short Sale Report file to the ASX online portal; and
 - (ii) selected a check box which certified that MSAL had a “Nil Short Sale Position” for the relevant date, which had the effect of overwriting the uploaded Short Sale Report;
- (c) MSAL has identified, and it is the fact, that MSAL discovered the 2015 Incident during a review by the MSAL MOD Team of the short sale data on the ASX website for the trade date 23 June 2015; and
- (d) MSAL indicated to ASIC that it had:
 - (i) implemented several changes to its documented MOD procedures; and
 - (ii) provided training to the MOD Team on the updated procedures in relation to the Short Sale Report and the importance of ensuring the Short Sale Report was accurate;

to prevent a reoccurrence of the 2015 Incident.

Particulars

Letter from MSAL to ASIC dated 10 July 2015 (MFR.0003.0005.0001)

57. In respect of the 2019 Incident:

- (a) MSAL has identified, and it is the fact, that the 2019 Incident included four distinct issues, being:

- (i) the overreporting of short sales during the period from 19 December 2013 to 10 May 2019 due to the inclusion of duplicate orders, which resulted from a technology system change implemented on 6 September 2013 during a larger IT functionality change;
 - (ii) the overreporting of short sales during the period from 11 December 2009 to 7 August 2019, in instances where a trader created an interim manual ticket after receiving client instructions but before the order was actually received by FIX, which manual ticket would cause the short sale to be over-reported;
 - (iii) the underreporting of short sales, during the period from 3 October 2018 to 15 November 2019, in relation to Trading Basket Orders where the client cross reference was not attached to the ticket; and
 - (iv) the underreporting of short sales, during the period from 6 October 2016 to 9 November 2019, in relation to one client resulting from a previous system limitation;
- (b) MSAL has identified, and it is the fact, that the 2019 Incident resulted, during the period from 11 December 2009 to 15 November 2019, in:
- (i) at least 70 inaccurate Short Sale Reports being submitted by MSAL to the Market Operator;
 - (ii) at least 529 instances in which MSAL failed to report to the Market Operator the correct number of covered short sales for a particular section 1020B product on the relevant trading day; and
 - (iii) at least 41,312,151 covered short sales being incorrectly reported to the Market Operator.
- (c) in respect of the issue pleaded in paragraph 57(a)(i) above, MSAL has identified, and it is the fact that:
- (i) the technology change that caused the issue included the removal of some reporting logic which was not intended;
 - (ii) the request for approval of this change and release notes did not identify the change in code;

- (iii) due to the change in code not being identified, it was not captured in testing scenarios completed at the time of the change;
 - (iv) the issue involved control breakdowns, including:
 - (1) poor design of hard coding of trade data filters, where the design of the code and architecture did not meet clean data standards and the impacts on regulatory reporting were not effectively identified; and
 - (2) there was no reconciliation or assurance of the report submission in relation to the detection of duplicate trades;
 - (v) MSAL was of the view that the period of the misreporting indicated that the relevant arrangements for ensuring compliance with the Corporations Act were inadequate; and
 - (vi) there is no evidence that testing was conducted to identify the inclusion of duplicate orders;;
- (d) MSAL indicated that it had undertaken certain remedial actions, which were intended to remedy the issues pleaded at paragraph 57(a) above, including:
- (i) a review of MSAL's short sale reporting process in order to identify any potential control enhancements, which MSAL described as encompassing a "comprehensive" review;
 - (ii) the review referred to in the preceding sub-paragraph:
 - (1) commenced with an initial review after the identification of the issue pleaded in paragraph 57(a)(i) above, which initial review looked at both the Agency short selling calculation and Principal short selling calculation and identified the issue pleaded in paragraph 57(a)(ii); and
 - (2) following that initial review, a further detailed examination was conducted of the reporting logic of the IT Portal, which identified the issues pleaded in paragraphs 57(a)(iii) and 57(a)(iv) above;
 - (iii) implementing an automated exception report to identify instances of the circumstances outlined in the issue pleaded in paragraph 57(a)(ii), which

exceptions were reviewed and addressed by Middle Office and the business prior to reporting on a daily basis;

- (iv) implementing the Periodic Assurance of Critical Controls review pleaded at paragraph 25(b) above, which found that the short sale reporting process was error-prone and might continue to affect the integrity of the daily submission of the Short Sale Report;
- (v) implementing the Daily Short Sell Orders Report pleaded at paragraph 22(a)(iii) above; and
- (vi) amendments to the code of the IT Portal report in October 2019.

Particulars

Letter from MSAL to ASIC dated 1 July 2019 (MFR.1006.0004.4745).

Short Selling Review: MSAL dated 15 November 2019 (MFR.1009.0001.0014).

Email from MSAL to ASX dated 17 January 2020 (MFR.1009.0001.0236).

Control Assurance Final Report: ASX Short Sale Report dated July 2020 (MFR.1014.0001.0132).

Email from MSAL to ASX dated 1 May 2023 (MFR.1006.0003.8272).

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003).

Letter from MSAL to ASIC dated 2 September 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1011.0003.0008).

Excel file entitled 'Appendix B - MSAL 912C Notice - NTC2423534 - 020924.xlsx' dated 2 September 2024 (MFR.1011.0003.0013), attached to an email from MSAL to ASIC dated 2 September 2024 (MFR.1011.0003.0001).

58. The review of of MSAL's short sale reporting process alleged in paragraph 57(d)(i) above, including the examination of the logic of IT Portal alleged in paragraph 57(d)(ii), did not identify Issues 5 to 9.
59. In relation to, and prior to the discovery of, the 2019 Incident, MSAL has identified, and it is the fact, that:
- (a) during the second half of 2018, MSAL conducted a high-level review of its short sale reporting accuracy as part of a groupwide review of Macquarie Group's short selling reports (**2018 Review**);
 - (b) the 2018 Review tested the logic of the Short Sale Report against the Short Sale Reporting Obligations; and
 - (c) the logic extracted and provided to IT as part of the 2018 review did not include details relating to the issues pleaded in paragraphs 57(a)(i) and 57(a)(ii) above.

Particulars

Email from MSAL to ASX dated 17 January 2020 (MFR.1006.0003.2899).

- (d) at some point in 2019, MSAL conducted an Internal Audit Review which tested the submission process for the Short Sale Reports as well as the associated controls (**2019 Audit**); and
- (e) the 2019 Audit did not test the logic of the Short Sale Report and associated controls concerning short sale tagging.

Particulars

Email from MSAL to ASX dated 17 January 2020 (MFR.1009.0001.0236)

60. Neither the 2018 Review nor the 2019 Audit identified Issues 5 to 9.
61. On 17 January 2020, MSAL stated in an email to the ASX that:
- (a) MSAL was in the process of planning implementation of a new back-office system which would replace the system currently used by MSAL to calculate its gross daily aggregated short sales; and

- (b) as part of that implementation, MSAL envisaged that the current short-sale aggregation process would be significantly simplified to prevent future breaches and that it was currently working to simplify the current process.

Particulars

Email from MSAL to ASX dated 17 January 2020 (MFR.1009.0001.0236)

D.2. Historical regulatory data reporting incident

- 62. In addition to Issue 10 set out above and the related contraventions alleged in this statement of claim, MSAL had previously notified ASIC of an incident concerning incorrect information in Orders and Trade Reports it had submitted to the Market Operator between 28 July 2014 and 31 July 2018 (**MDP Incident**).
- 63. In relation to the MDP Incident, on 3 May 2019 ASIC's Market Disciplinary Panel (**MDP**) issued MSAL with an infringement notice under reg 7.2A.04 of the Corporations Regulations for the purposes of s 798K of the Corporations Act (**MDP Notice**).

Particulars

Commonwealth of Australia Gazette, MDP01/19, Markets Disciplinary Panel:
Infringement Notice dated 3 June 2019.

- 64. In the MDP Notice, the MDP found that:
 - (a) between 28 July 2014 and 31 July 2018, MSAL:
 - (i) transmitted a total of 42,027,429 Orders to the Market Operator (comprising 41,073,611 Orders to ASX and 953,818 Orders to Cboe) that included incorrect, or omitted required, Regulatory Data (being the Capacity, Origin and/or Intermediary); and
 - (ii) submitted a total of 377,175 Trade Reports to the Market Operator (comprising 30,540 Trade Reports to ASX and 346,635 Trade Report to Cboe) that included incorrect, or omitted required, Regulatory Data (being the Capacity, Origin and/or Intermediary categories);

- (b) the causes of the incorrect or missing Regulatory Data, which were not detected by MSAL's systems over the period from 28 July 2014 to 31 July 2018, were:
 - (i) operational errors in configuring systems to integrate with each other in the lead up to the commencement of the Security Market Rules in July 2014, including account designations being updated in the client account database but not flowing through to other systems which provided the Regulatory Data;
 - (ii) weaknesses in the process for on-boarding new clients, including:
 - (1) in the requirements for information to be communicated between teams;
 - (2) errors made when designating capacity details based on lack of understanding about the definitions of principal and agency and the intended use of the account being set up; and
 - (3) human error when adding or changing accounts, fields and systems which provided the Regulatory Data; and
 - (iii) weaknesses in the control frameworks, including:
 - (1) manual entry required by a number of different personnel;
 - (2) coding issues where changes to a system were made;
 - (3) systems not made to reconcile against each other where there were inconsistencies for the same client;
 - (4) default settings being applied in some circumstances; and
 - (5) systems not prompting for Regulatory Data fields to be completed or allowing trading messages to be sent with blank fields; and

(c) the MDP had reasonable grounds to believe that MSAL contravened s 798H(1) of the Corporations Act on 42,404,604 occasions by reason of it contravening r 7.4.2 of the Securities Markets Rules on:

- (i) 42,027,429 occasions in relation to Orders; and
- (ii) 377,175 occasions in relation to Trade Reports.

E. CONTROLS IMPLEMENTED AFTER IDENTIFICATION OF THE ISSUES

E.1. Additional Controls for Short Sale Report

65. After identifying Issues 1 to 6 in October 2022, MSAL designated all Short Sale Reporting Controls (pleaded at paragraph 22 above) as critical controls for the purpose of the Periodic Assurance of Critical Controls pleaded at paragraph 25(b) above.

66. MSAL has identified, and it is the fact, that MSAL has implemented the following remedial steps (**Additional Short Sale Controls**):

- (a) In relation to Issue 1 (pleaded at paragraphs 33(a) and 34 above):
 - (i) on 5 October 2022, MSAL implemented the “**Manual Storm Booking Check**” control, which manually identifies and removes any duplicate dummy fills included in the Short Sale Report; and
 - (ii) on 21 December 2022, MSAL implemented a change to the IT Portal logic which remediated Issue 1, resulting in the Manual Storm Booking Check no longer being required.

Particulars

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003)

- (b) In relation to Issues 2, 4, 5 and 6 (pleaded at paragraphs 33(b), 33(d), 33(e) and 33(f) and above respectively):
- (i) after the identification of Issues 2, 4, 5 and 6, MSAL implemented updates to the logic in the IT Portal to address those issues;
 - (ii) on 18 November 2022, MSAL conducted a 5-day parallel production testing which confirmed that the logic updates successfully remediated Issues 1, 2, 4, 5; and
 - (iii) on 21 December 2022, the updated logic was implemented to rectify Issue 1, 2, 4, 5 and 6.

Particulars

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

- (c) In relation to Issue 3 (pleaded at paragraph 33(c) above):
- (i) the Middle Office Technology team engaged with FNZ (the vendor of SYNANG) to implement a fix on the Cboe adaptor; and
 - (ii) the update was released after market on 29 November 2022 with the change effective from 30 November 2022.

Particulars

Letter from MSAL to ASIC dated 25 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1003.0001.0004).

- (d) In relation to Issue 7 (pleaded at paragraph 41(a) above):
- (i) on 23 August 2023, MSAL implemented a “**Late Trade Alert**” control to report all late market crossing trades and late amendments made in Fidessa, which functions as follows:
- (1) An email alert is generated at 10:00pm each trading day which identifies all late trades and late amendments that occurred between 5:00pm and 10:00pm.
 - (2) Where there are late trades or late amendments identified in that report, then, prior to 9.00am on the next trading day, the Middle Office team reconciles the output from the 8:00pm IT Portal Short Sale Report to the 5:00pm IT Portal Short Sale Data Load.
 - (3) Where changes to the Short Sale Report are required as a result of this reconciliation, the MOD Team relodges the Short Sale Report by 9:00am on that next trading day.
- (ii) from 15 February 2024, the B-feed aggregator process is completed twice each trading day at 4:30pm and 7:30pm to account for position keeping of late principal crossings in SYNANG.

Particulars

Letter from MSAL to ASIC dated 28 March 2024 in relation to the Reportable Situation Reports with Reference Numbers s 304383 and 315014 (MFR.0003.0001.0051);

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003)

(e) In relation to Issue 8 (pleaded at paragraph 41(b) above):

(i) on 3 February 2023, MSAL implemented an “**Intra-day Manual Bookings Report**” control whereby:

- (1) a review by the MOD Team of any manual intraday DMA bookings would be conducted;
- (2) where appropriate, the MOD Team would then input a manual adjustment to the Short Sale Report to account for the intraday manual bookings and reverse the incorrect adjustments; and

(ii) this control was automated in August 2023.

Particulars

Letter from MSAL to ASIC dated 28 March 2024 in relation to the Reportable Situation Reports with Reference Numbers s 304383 and 315014 (MFR.0003.0001.0051);

Letter from MSAL to ASIC dated 15 March 2024 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1008.0001.0003)

(f) In relation to Issue 9 (pleaded at paragraph 41(c) above):

(i) on 16 May 2023, the MOD Team implemented the “**IT Portal Report Extraction Time Alert**”, which:

- (1) ensures that all relevant data processing has been completed before the MOD Team extracts the Short Sale Report for submission to ASX; and
- (2) automatically notifies the MOD Team via email when this process is complete and the data for the Short Sale Report is ready for extraction.

(g) In relation to Issue 10 (pleaded at paragraph 49 above):

(i) following identification of Issue 10 on 21 March 2023, MSAL developed a preventative control which:

- (1) was designed to block orders and trades being submitted to a market operator using any default mapping relating to the client's domicile or booking entity;
- (2) results in orders for clients without an AFSL being rejected and subsequently triggers an investigation into a potential static data issue;
- (3) generates an alert for impacted clients which:
 - (A) is generated through a process which verifies the relevant static data set up every 10 minutes where a change is detected; and
 - (B) is sent to the Technology Trade Support and Development team to perform the required triage and remediation of the static data set up; and
- (4) has been incorporated into MSAL's testing requirements for any future changes identified that may potentially impact its Regulatory Data submissions.

Particulars

Letter from MSAL to ASIC dated 13 October 2023 in response to a notice issued pursuant to s 912C(1) of the Corporations Act (MFR.1002.0001.0003).

E.2. Additional Controls for Regulatory Reporting

67. Subsequently to identifying Issue 10 in March 2023, MSAL has implemented a control in relation to the Regulatory Reporting Process referred to as the "SYNREF Block" (**Additional Regulatory Reporting Control**), which:

- (a) was implemented on 10 June 2023;
- (b) is an automated process;

- (c) is a pre-trade control;
- (d) is designed to prevent orders and trades from being submitted to the Market Operator where an account is using any default mapping relating to its domicile or booking entity which may result in the non-reporting of the intermediary ID; and
- (e) involves the following steps:
 - (i) a review in the SYNREF to FIS interface is performed to confirm that there is an entity rule populated at the client level with MSAL for non-Australian domiciled clients;
 - (ii) where the review referred to in the preceding subparagraph identifies that there is no such entity rule, the account will not be included in the file sent from SYNREF to FIS, which triggers a rejection of those orders; and
 - (iii) the rejection of the orders referred to in the preceding subparagraph triggers an email alert sent to the Technology Trade Support and Development Team, who then commence a review of the static data set up and remediate the relevant issue.

F. BREACH OF S 798H(1) OF THE CORPORATIONS ACT

F.1. Supervision Duty and Resourcing Duty

68. By reason of the matters pleaded in paragraph 2(g) above, pursuant to s 798H(1)(b) of the Corporations Act, MSAL is and was required to comply with:
- (a) *ASIC Market Integrity Rules (ASX Market) 2010* (Cth) (**ASX Rules**) during the period from 1 August 2010 to 6 May 2018;
 - (b) *ASIC Market Integrity Rules (Chi-X Australia Market) 2011* (**Chi-X Rules**) during the period from 4 May 2011 to 6 May 2018; and
 - (c) the Securities Markets Rules from 4 December 2017,
- (together, the **MIR**).

69. Pursuant to r 19.6.1 of the ASX Market Rules (up to and including 31 July 2010) and r 3501 of the ASX Operating Rules (on and from 1 August 2010), during the Relevant Period, MSAL was required:
- (a) to provide to ASX Limited (via ASX Online unless otherwise directed by ASX Limited) a Short Sale Report which set out all the information as required in the ASX Rules; and
 - (b) to provide the Short Sale Report by the time specified in the ASX Rules.
70. Pursuant to r 4.8 of the Cboe Operating Rules, during the period from 4 May 2011 up to and including the last day of the Relevant Period (**Cboe Market Period**), MSAL was required to provide to Cboe Australia Pty Limited the information required by ss 1020AB and 1020AC of the Corporations Act:
- (a) in accordance with the Corporations Act and the MIR; and
 - (b) in the form, and by the time, specified in the Cboe Operating Rules Procedures.
71. By reason of the matters pleaded in the paragraphs 5 to 8 and 68 to 70 above:
- (a) during the entirety of the Relevant Period in respect of the ASX; and
 - (b) during the Cboe Market Period in respect of Cboe Australia,
- MSAL was required:
- (c) pursuant to r 2.1.3 of the MIR, to have appropriate supervisory policies and procedures to ensure compliance by MSAL and each person involved in its business as a market participant with the MIR, the operating rules of each relevant market (including the rules pleaded in paragraphs 69 and 70 above) and the Corporations Act (**Supervision Duty**); and
 - (d) pursuant to r 5.5.2(b) of the MIR, to have and maintain the necessary organisational and technical resources to ensure that MSAL complied at all times with the MIR and the operating rules of all Markets of which it was a participant (including the rules pleaded in paragraphs 69 and 70 above) (**Resourcing Duty**).

F.2 Supervision Duty Breaches

72. During the period from 14 May 2019 to 14 February 2024 (**Contravention Period**), the content of, and/or the steps necessary for MSAL to comply with, the obligation imposed

on MSAL by the Supervision Duty (as it applied to ensuring compliance with the Short Sale Reporting Obligations, the AFSL Number Duty and/or the requirements, regulations and rules pleaded in paragraphs 7, 69 and 70 above) was informed by circumstances which included the following:

- (a) MSAL's historical short sale reporting incidents and associated reviews pleaded at paragraphs 55 to 61 and 62 to 64 above;
- (b) MSAL's size and sophistication, including as pleaded at paragraph 9(a) to (f) above;
- (c) MSAL's resources, including those pleaded at paragraph 9 above;
- (d) the number of covered short sale transactions transacted by MSAL;
- (e) the design of MSAL's Short Sale Reporting Process, as alleged in paragraphs 21(a) to 21(f);
- (f) the design of MSAL's Regulatory Reporting Process, as alleged in paragraphs 27(a) to 27(h);
- (g) the risk that Short Sale Reports submitted by MSAL to a Market Operator might fail to meet the requirements of the Short Sale Reporting Obligations, including by:
 - (i) including incorrect data in the Short Sale Report;
 - (ii) omitting data required to be included in the Short Sale Report;
- (h) the risk that Trade Reports and/or Orders submitted by MSAL to a Market Operator might fail to comply with the AFSL Number Duty.

73. MSAL was required to take all, or alternatively some combination, of the following measures in compliance with the Supervision Duty (as it applied to ensuring compliance with the Short Sale Reporting Obligations, the AFSL Number Duty and/or the requirements, regulations and rules pleaded in paragraphs 7, 69 and 70 above) sufficient to address the circumstances pleaded in paragraph 72(a) to 72(h) above:

- (a) to implement regular or appropriate reviews of the design of the Short Sale Reporting Process, including the logic relied on to generate the Short Sale Report, for the purpose of:

- (i) identifying any errors in the logic relied on to generate the Short Sale Report;
 - (ii) identifying the frequency and nature of manual adjustments or interventions made for Short Sale Reports generated through the Short Sale Reporting Process;
 - (iii) assessing the suitability and efficacy of the Short Sale Reporting Controls;
 - (iv) identifying whether further controls directed towards identifying any errors in the Short Sale Reports submitted by MSAL to the Market Operator should be implemented; and
 - (v) identifying any changes required to be made to the design of the Short Sale Reporting Process to address the matters referred to in subparagraphs 73(a)(i) to 73(a)(iv) above;
- (b) to implement regular or appropriate reviews of the quality of the output of the Short Sale Reporting Process to identify and remediate any errors in the Short Sale Report, including by comparing all of the data included in a sample of Short Sale Reports submitted by MSAL against other data held by MSAL and/or the Macquarie Group in relation to MSAL's covered short sale transactions for the same sample period to ensure that the data in the Short Sale Reports it sampled was accurate; and
 - (c) to implement regular or appropriate reviews of the quality of the output of the Regulatory Data included in Orders and Trade Reports submitted by MSAL to the Market Operator, including by comparing the Regulatory Data included in a sample of Orders and Trade Reports submitted by MSAL to the Market Operator against other data held by MSAL and/or the Macquarie Group in relation to the sample Orders and Trade Reports to ensure that the data in the Orders and Trade Reports it sampled was accurate;
 - (d) to implement appropriate controls directed towards identifying errors in the Short Sale Reports submitted by MSAL to the Market Operator;
 - (e) to implement appropriate controls directed towards identifying errors in the Regulatory Data required to be included in Orders and Trade Reports submitted by MSAL to the Market Operator;

- (f) to implement regular or appropriate reviews of any controls applied to the Short Sale Reporting Process, including the Short Sale Reporting Controls, to assess the efficacy of those controls;
 - (g) to implement regular or appropriate reviews of any controls applied in relation to generating the Regulatory Data required to be included in Orders and Trade Reports submitted by MSAL to the Market Operator;
 - (h) to implement proper change management controls for changes made to information technology systems relied on to generate the:
 - (i) Short Sale Report, including the systems pleaded in paragraphs 20(a) to 20(g) above;
 - (ii) Regulatory Data required to be included in Orders and Trade Reports, including the systems pleaded in paragraphs 27 to 28 above;
 - (i) to implement appropriate testing prior to deploying changes to information technology systems relied on to generate the:
 - (i) Short Sale Report, including the systems pleaded in paragraphs 20(a) to 20(g) above;
 - (ii) Regulatory Data required to be included in Orders and Trade Reports, including the systems pleaded in paragraphs 27 to 28 above; and
 - (j) to implement appropriate testing or reviews at any time after the implementation of changes made to information technology systems relied on to generate the:
 - (i) Short Sale Report, including the systems pleaded in paragraphs 20(a) to 20(g) above;
 - (ii) Regulatory Data required to be included in Orders and Trade Reports, including the systems pleaded in paragraphs 27 to 28 above.
74. During the Contravention Period, MSAL failed to take the steps alleged at paragraphs 73(a) to 73(j) above, including by reason of the following matters:
- (a) MSAL failed to conduct any, or alternatively any regular or appropriate, reviews of the design of the Short Sale Reporting Process for the purposes of identifying and/or assessing the matters pleaded in paragraph 73(a) above;

Particulars

1. Prior to identifying Issue 1 on or around 5 October 2022, MSAL did not regularly review, the logic of the IT Portal relied on to generate the Short Sale Report.
2. The review of of MSAL's short sale reporting process alleged in paragraph 57(d)(i) above, including the examination of the logic of IT Portal alleged in paragraph 57(d)(ii), did not identify Issues 5 to 9.
3. The 2019 Audit did not test the logic of the Short Sale Report and associated controls concerning short sale tagging, and did not identify Issues 5 to 9.
4. The root causes of Issues 1 to 9 included the underlying system logic and/or data mapping in the IT Portal not being fit for purpose (as referred to in paragraphs 40(c) and 45(a) above).
5. At least each of Issues 1, 2, 5 and 8 arose due to inaccuracies in the logic of the IT Portal used to generate the Short Sale Report.
6. The root causes of Issues 7 to 9 included inadequate process design for the Short Sale Reporting Process.
7. Issues 2, 5, 6 and 7 to 9 persisted for significant periods of time, but were only identified after work was commenced by MSAL in or around October 2022 in response to identifying Issue 1. In particular:
 - a. Issue 2 arose on or around 11 December 2020, but was only identified as part of a review commenced by MSAL after it had identified Issue 1 (as referred to in paragraph 35(f) above).
 - b. Issue 5 affected Short Sale Reports submitted by MSAL during the period from approximately October 2011 to 21 December 2022, but was only identified as part of a review commenced by MSAL after it had identified Issue 1 (as referred to in paragraph 35(f) above).
 - c. Issue 6 persisted during the period from October 2011 to 21 December 2022, but was only identified as part of a review

commenced by MSAL after it had identified Issue 1 (as referred to in paragraph 39(d) above).

- d. Issue 7 persisted during the period from 11 December 2009 to 14 February 2023, but was only identified by MSAL while undertaking work to remediate Issues 1 to 6 (as pleaded in paragraph 42(e) above).
 - e. Issue 8 affected Short Sale Reports submitted by MSAL during the period from 11 December 2009 to 14 February 2024, but was only identified by MSAL while it was undertaking work to remediate Issues 1 to 6 (as referred to in paragraph 43(e) above).
 - f. Issue 9 persisted during the period from 11 December 2019 to 15 May 2023, but was only identified by MSAL while undertaking work to remediate Issues 1 to 6 (as referred to in paragraph 44(c) above).
- (b) MSAL failed to implement any, or alternatively any regular or appropriate, reviews of the quality of the output of the Short Sale Reporting Process, including reviews of the kind pleaded in paragraph 73(b) above;

Particulars

1. The Periodic Reviews completed by MSAL in relation to its Short Sale Reporting Process (as referred to in paragraphs 25(a) to 25(d) above) did not include reviewing the quality or accuracy of the Short Sale Reports submitted by MSAL, including by comparing all of the data included in a sample of Short Sale Reports submitted by MSAL against other data held by MSAL and/or Macquarie Group in relation to MSAL's covered short sale transactions for the same sample period for the purpose of ensuring that the data included in the Short Sale Report was correct.
2. Issues 2, 5, 6 and 7 to 9 persisted for significant periods of time, but were only identified after work was commenced by MSAL in response to identifying Issue 1. In particular:

- a. Issue 2 arose on or around 11 December 2020, but was only identified as part of a review commenced by MSAL after it had identified Issue 1 (as referred to in paragraph 35(f) above).
 - b. Issue 5 affected Short Sale Reports submitted by MSAL during the period from approximately October 2011 to 21 December 2022, but was only identified as part of a review commenced by MSAL after it had identified Issue 1 (as referred to in paragraph 35(f) above).
 - c. Issue 6 persisted during the period from October 2011 to 21 December 2022, but was only identified as part of a review commenced by MSAL after it had identified Issue 1 (as referred to in paragraph 39(d) above).
 - d. Issue 7 persisted during the period from 11 December 2009 to 14 February 2023, but was only identified by MSAL while undertaking work to remediate Issues 1 to 6 (as pleaded in paragraph 42(e) above).
 - e. Issue 8 affected Short Sale Reports submitted by MSAL during the period from 11 December 2009 to 14 February 2024, but was only identified by MSAL while it was undertaking work to remediate Issues 1 to 6 (as referred to in paragraph 43(e) above).
 - f. Issue 9 persisted during the period from 11 December 2019 to 15 May 2023, but was only identified by MSAL while undertaking work to remediate Issues 1 to 6 (as referred to in paragraph 44(c) above).
 - 3. Issues 3 and 4 were only identified by MSAL as part of a review undertaken of the logic used to generate the Short Sale Report after MSAL had identified Issue 1 (as referred to in paragraphs 36(d) and 37(d) above).
- (c) MSAL failed to implement any, or alternatively any regular or appropriate, reviews of the quality of the output of the Regulatory Data included in Orders and Trade Reports submitted by MSAL to the Market Operator;

Particulars

The Quarterly Review completed by MSAL (as referred to in paragraph 29(c) above) did not include a review of the accuracy of the Regulatory Data included in Orders and Trade Reports submitted by MSAL to the Market Operator.

- (d) MSAL did not have in place appropriate controls directed towards identifying errors in the Short Sale Reports submitted by MSAL to the Market Operator;

Particulars

1. MSAL identified that the root cause of Issues 1 to 6 included that there was a lack of detective controls in place in relation to the accuracy of the Short Sale Report.
 2. The root causes of Issues 7 to 9 included MSAL's failure to implement appropriate detective controls to identify errors in the Short Sale Report.
 3. At all material times during the Contravention Period, none of the Short Sale Reporting Controls pleaded in paragraph 22 above were designed to identify inaccuracies in the logic of the IT Portal used to generate the Short Sale Report.
 4. MSAL failed to configure any automatic alert or notification to indicate when the data processing as part of the Short Sale Reporting Process pleaded in paragraphs 21(a) to 21(f) had been completed and, accordingly, the Short Sale Report was ready to be extracted and submitted to the Market Operator.
 5. MSAL failed to implement the Additional Short Sale Controls pleaded at paragraphs 66(a) and 66(d) to 66(g) above prior to the dates pleaded in those paragraphs.
- (e) MSAL did not have in place appropriate controls directed towards identifying errors in the Regulatory Data required to be included in Orders and Trade Reports submitted by MSAL to the Market Operator;

Particulars

1. ASIC refers to and repeats paragraph 30 above.
 2. The root cause of Issue 10 included MSAL's failure to implement appropriate detective controls to identify errors in its Trade Reports and/or Orders submitted to the Market Operator as pleaded in paragraph 54(c) above.
 3. MSAL failed to implement the Additional Regulatory Reporting Control pleaded at paragraph 67 above during the Relevant Period prior to around March 2023.
- (f) MSAL failed to conduct regular or appropriate reviews of relevant controls applied to the Short Sale Reporting Process, including the Short Sale Reporting Controls, to assess the efficacy of those controls;

Particulars

From at least 11 December 2009 until October 2022, the Periodic Reviews (as pleaded in paragraph 25 above) did not assess the design and operating effectiveness of the following Short Sale Reporting Controls:

1. the Trade Volume Check pleaded in paragraph 22(a)(i) above;
 2. the Four-Eye Check pleaded in paragraph 22(b)(ii) above;
 3. the End of Day Sign-Off Email pleaded in paragraph 22(b)(iii) above; and
 4. the compliance monitoring pleaded in paragraph 22(b)(iv) above.
- (g) MSAL failed to conduct any, alternatively any regular or appropriate, reviews of controls applied in relation to generating the Regulatory Data included in Orders and Trade Reports submitted by MSAL to the Market Operator;

Particulars

ASIC refers to and repeats paragraph 30 above.

- (h) MSAL did not have in place, or alternatively did not enforce, proper change management controls for changes made to information technology systems relied on:
- (i) to generate the Short Sale Report, including the systems pleaded in paragraphs 20(a) to 20(g) above;
 - (ii) further, or alternatively, to paragraph 74(h)(i), to record, where required, the AFSL number in Orders and/or Trade Reports submitted to the Market Operator, including the systems pleaded in paragraphs 27(a) to 27(h) above;

Particulars

1. At least each of Issues 1, 3, 4 and 6 arose following the implementation of, or connection to, a new IT system or process.
2. At least each of Issues 2 and 10 arose following the implementation of a change to MSAL's IT systems, including a change to the logic of those systems.
3. The root cause of each of Issues 1 to 6 included that an appropriate change control process was not followed and was not appropriately documented for changes associated with the Short Sale Report or the underlying logic in the IT Portal.
4. The inaccurate reporting caused by Issues 1 to 6 were due to multiple failures in change governance over a period of 11 years: Document entitled "Complete write up for INC-0076893" (MFR.1013.0002.3955) attached to Annexure B to Board Paper titled "MSAL Quarterly Compliance Report October 2022 – December 2022" included in Board materials for MSAL Board Meeting on 9 March 2023 (MFR.1006.0001.0085).
5. The change made to the report logic which gave rise to Issue 2 did not go through the change management process required by MSAL's own IT Change Enablement Standard.
6. The root cause of Issue 10 included that an appropriate change control process was not followed.

7. ASIC refers to and repeats paragraphs 34(a), 35(b) to 35(d), 36(b) to 36(c), 37(b) to 37(c), 39(b), 39(c)(ii), 40(a), 53(b) to 53(c) and 54 above.

(i) MSAL failed to implement any, or alternatively any appropriate, testing prior to deploying changes to information technology systems relied on:

- (i) to generate the Short Sale Report, including the systems pleaded in paragraphs 20(a) to 20(g) above;
- (ii) further, or alternatively, to subparagraph immediately (i), to record, where required, the AFSL number in Orders and/or Trade Reports submitted to the Market Operator, including the systems pleaded in paragraphs 27(a) to 27(h) above;

Particulars

- 1. At least Issues 1, 3, 4, 6 and 10 arose following a failure appropriately to test certain scenarios in relation to the relevant change.
- 2. At least Issue 2 arose following no testing having been performed prior to implementing the relevant change.
- 3. ASIC refers to and repeats paragraph 34(c), 28(b) to 35(e), 36(b) to 36(c), 37(b) to 37(c), 39(c)(ii) 40, 53(d)(ii) and 54(a) above.

(j) MSAL failed to implement any, or alternatively any appropriate, testing or reviews at any time after the implementation of changes made to information technology systems relied on to generate the Short Sale Report including the systems pleaded in paragraphs 20(a) to 20(g) above;

Particulars

- 1. At least Issue 1 arose following a failure appropriately to test certain scenarios in relation to the relevant change following implementation of the change.
- 2. ASIC refers to and repeats paragraph 34(c) above.

75. By reason of the matters pleaded in paragraphs 72 to 74 above, MSAL breached the Supervision Duty.
76. By reason of the matters pleaded in paragraph 75 above, MSAL has contravened s 798H(1)(b) of the Corporations Act.
77. In relation to the contravention of s 798H(1)(b) of the Corporations Act pleaded in paragraph 76 above, ASIC alleges that a single contravention of s 798H(1)(b) arises in respect of the matters pleaded at paragraphs 72 to 76 above.

F.3. Resourcing Duty Breach

78. During the Contravention Period, the content of, and/or the steps necessary for MSAL to comply with, the obligation imposed on MSAL by the Resourcing Duty (as it applied to ensuring compliance with the AFSL Number Duty and/or the requirements of the MIR and operating rules pleaded in paragraphs 69 and 70 above) was informed by circumstances which included the matters pleaded in paragraphs 72(a) to 72(h) above.
79. MSAL was required to take all, or alternatively some combination, of the measures pleaded at paragraphs 73(a) to 73(j) above in compliance with the Resourcing Duty sufficient to address the circumstances pleaded in paragraph 72(a) to 72(h) above.
80. During the Contravention Period, MSAL failed to take the steps alleged at paragraph 79 above, including by reason of the following matters:
 - (a) the matters pleaded at paragraph 74 above:
 - (b) the design of the Short Sale Reporting Process and the systems pleaded in paragraphs 20(a) to 20(g) relied too heavily on manual intervention and changes; and
 - (c) the underlying system logic and/or data mapping used by IT Portal to compile the Short Sale Report was not fit for purpose.
81. By reason of the matters pleaded in paragraphs 72, and 78 to 80 above, MSAL has breached the Resourcing Duty.
82. By reason of the matters pleaded in paragraph 81 above, MSAL has contravened s 798H(1)(b) of the Corporations Act.

83. In relation to the contravention of s 798H(1)(b) of the Corporations Act pleaded in paragraph 82 above, ASIC alleges that a single contravention of s 798H(1)(b) arises in respect of the matters pleaded at paragraphs 72 and 78 to 82 above.

F.4. AFSL Number Duty Breach

84. By reason of the matters pleaded in paragraphs 49 to 54 above, MSAL breached the AFSL Number Duty.
85. By reason of the matters pleaded in paragraph 84 above, MSAL has contravened s 798H(1)(b) of the Corporations Act.
86. In relation to the contravention of s 798H(1)(b) of the Corporations Act pleaded in paragraph 85, ASIC alleges that, during the Contravention Period:
- (a) separate contraventions of s 798H(1)(b) arise in respect of each of the 633,680 Orders pleaded in paragraph 51(a); and
 - (b) in the alternative to the preceding sub-paragraph, a single contravention of s 798H(1)(b) arises in respect of the matters pleaded at paragraphs 84 to 85 above.

G. BREACH OF S 912A(1)(H) OF THE CORPORATIONS ACT

87. By reason of the matters pleaded in paragraph 2(e) above and s 912A(1)(h) of the Corporations Act, MSAL is, and at all material times was, required to have adequate risk management systems.
88. During the Contravention Period, the content of, and/or the steps necessary for MSAL to comply with, the obligation imposed on MSAL by s 912A(1)(h) of the Corporations Act was informed by circumstances which included the circumstances pleaded at paragraphs 72(a) to 72(h) above.
89. MSAL was required to take all, or alternatively some combination, of the measures pleaded at paragraphs 73(a) to 73(j) above in compliance with s 912A(1)(h) of the Corporations Act sufficient to address the circumstances pleaded at paragraphs 72(a) to 72(h) above.
90. During the Contravention Period, MSAL failed to take the steps alleged at paragraphs 73(a) to 73(j) above, including by reason of the matters pleaded at paragraphs 74(a) to 74(j) above.

91. By reason of the matters pleaded in paragraphs 87 to 90 above, MSAL has breached s 912A(1)(h) of the Corporations Act.
92. In relation to MSAL's contravention of s 912A(1)(h) of the Corporations Act, ASIC alleges that a single contravention of s 912A(1)(h) arises in respect of the matters pleaded in paragraphs 87 to 91.

H. BREACH OF S 1308(5) OF THE CORPORATIONS ACT

H.1. Issues 1 to 9 (Short Sale Reports)

93. By reason of the matters pleaded in paragraphs 5 and 6 above, the Short Sale Report was a document required under or for the purposes of the Corporations Act.

Particulars

Corporations Act, s 1308(5)(a)(i).

94. By reason of the matters pleaded in paragraphs 16 and 33 to 45 above, during the Relevant Period, MSAL made statements in each of its Short Sale Reports as to the number of covered short sales per section 1020B product it had executed in each of the ASX and Cboe Australia on each trading day in that period.

Particulars

Corporations Act s 1308(5)(b)(i).

95. By reason of the matters pleaded in paragraphs 33 to 45 above, at least 918 Short Sale Reports provided by MSAL to the relevant Market Operator during the Contravention Period were materially false or misleading because of the statements referred in paragraph 94 above.

Particulars

Corporations Act s 1308(5)(c).

The 918 Short Sale Reports relied on by ASIC are identified in Annexure B.

96. During the Contravention Period, the content of, and/or the steps necessary for MSAL to comply with, the obligation imposed on MSAL by s 1308(5)(d) of the Corporations Act in

relation to its Short Sale Reports was informed by the circumstances pleaded at paragraphs 72(a) to 72(e) and 72(g) above.

97. MSAL was required to take all, or alternatively some combination, of the measures pleaded at paragraphs 73(a) to 73(j) above in compliance with s 1308(5)(d) of the Corporations Act sufficient to address the circumstances pleaded at paragraphs 72(a) to 72(e) and 72(g) above.
98. During the Contravention Period, MSAL failed to take the steps alleged at paragraph 97 above, including by reason of the matters pleaded at paragraphs 74(a) to 74(j) above.
99. By reason of the matters pleaded in paragraph 98 above, MSAL did not take all reasonable steps to ensure that the Short Sale Reports were not materially false or misleading because of the statements made in the Short Sale Reports.

Particulars

Corporations Act s 1308(5)(d).

100. By reason of the matters pleaded in paragraphs 93 to 99 above, MSAL has breached s 1308(5) of the Corporations Act.
101. In relation to MSAL's contravention of s 1308(5) of the Corporations Act alleged in paragraph 100 above, ASIC alleges that:
 - (a) separate contraventions of s 1308(5) arise in respect of each of the 918 Short Sale Reports pleaded in paragraph 95; and
 - (b) in the alternative to the preceding sub-paragraph, a single contravention of s 1308(5) arises in respect of the matters pleaded at paragraphs 93 to 99 above.

I. BREACH OF S 12DF(1) OF THE ASIC ACT

102. From 26 October 2018, for the purposes of Division 2 of Part 2 of the ASIC Act, a section 1020B product was a "financial service" within the meaning of s 12BAB(1AA) of the ASIC Act.

Particulars

Section 12BAB(1AA) of the ASIC Act came into operation on 26 October 2018 by reason of *Treasury Laws Amendment Act (Australian Consumer Law Review) Act 2018* (Cth), s 2, Sch 11 (item 2).

ASIC Act, s 12BAA (definition of “financial product”).

103. During the Contravention Period, MSAL submitted at least 918 Short Sale Reports which, by reason of the matters pleaded in paragraphs 33 to 45 above, contained an incorrect representation as to the total number of covered short sales for a particular section 1020B product executed on the ASX and/or Cboe Australia on the relevant trading day.

Particulars

The 918 Short Sale Reports relied on by ASIC are identified in Annexure B.

ASIC refers to and repeats paragraphs 46 to 48 above.

104. MSAL’s submission to the Market Operators of the Short Sale Reports during the Contravention Period containing the representations pleaded in paragraph 102 above was conduct in trade or commerce.

Particulars

ASIC Act, s 12DF(1).

105. The conduct pleaded in paragraphs 102 to 104 above was conduct liable to mislead the public as to the nature, characteristics or quantity of financial services (being the number of covered short sales for a particular section 1020B product executed on the ASX and/or Cboe Australia on the relevant trading day during the Contravention Period).

Particulars

ASIC Act, s 12DF(1).

106. By reason of the matters pleaded in paragraphs 102 to 105 above, MSAL has breached s 12DF(1) of the ASIC Act.
107. In relation to MSAL’s contravention of s 12DF(1) of the ASIC Act, ASIC alleges that, during the Contravention Period:

- (a) separate contraventions of s 12DF(1) arise in respect of each of the representations pleaded in paragraph 103 above, on the basis of the matters pleaded in paragraphs 102 to 105 above;
- (b) in the alternative to the preceding sub-paragraph, a single contravention of s 12DF(1) arises in respect of the matters pleaded in paragraphs 102 to 105 above.

J. RELIEF

108. In the premises, ASIC claims the relief set out in the Originating Process.

This pleading was prepared by Gadens, and settled by Luke Livingston SC, Amy Reid and Nicholas Carey of Counsel.

Date: 13 May 2025



Signed by Edward Martin
Lawyer for the plaintiff

Annexure A

MSAL had at least the following policies and procedures in place relevant to its Short Selling Reporting Obligations from the dates specified:

1. IT Change Enablement Standard:
 - a. version 5.0 dated 15 September 2020 (MFR.1010.0003.0695);
 - b. version 5.1 dated 31 March 2021 (MFR.1010.0003.0703);
 - c. version 5.2 dated 26 October 2021 (MFR.1010.0003.0711);
 - d. version 5.3 dated 18 October 2023 (MFR.1010.0003.0719);
2. IT Change Management Policy:
 - a. version 3.2 dated March 2012 (MFR.1019.0001.0198);
 - b. version 6.0 dated 26 August 2015 (MFR.1019.0001.0206);
 - c. version 7.2 dated May 2016 (MFR.1019.0001.0212).
3. Development, Testing and Change Management Policy:
 - a. version 1.1 dated 5 July 2018 (MFR.1019.0001.0215);
 - b. version 1.2 dated 7 July 2019 (MFR.1019.0001.0218);
 - c. version 1.3 dated 4 July 2020 (MFR.1019.0001.0222);
 - d. version 1.41 dated 1 July 2021 (MFR.1019.0001.0230);
 - e. version 1.5 dated 30 September 2021 (MFR.1019.0001.0225);
 - f. version 1.6 dated 24 February 2022 (MFR.1019.0001.0234);
 - g. version 2.0 dated 10 June 2022 (MFR.1019.0001.0239);
4. Technology Asset Management Policy version 1.0 dated 23 August 2023 (MFR.1019.0001.0245);
5. IT Change Management Standard:

- a. version 2.5 dated 4 November 2008 (MFR.1018.0001.0019);
 - b. version 2.6 dated 24 February 2010 (MFR.1018.0001.0024);
 - c. version 2.7 dated 2010 (MFR.1018.0001.0029);
 - d. version 3.0 dated 2012 (MFR.1018.0001.0038);
 - e. version 4.0 dated March 2019 (MFR.1010.0003.0682);
6. Technology Change Management version 1.2 dated July 2019 (MFR.1018.0001.0060);
7. MSG Short Sales Reporting Process Description:
- a. version 2.0 dated 26 October 2009 (MFR.1013.0002.1447 and MFR.1013.0002.3732);
 - b. version 2.2 dated 10 April 2012 (MFR.1013.0002.1472);
 - c. version 2.3 dated 11 April 2012 (MFR.1013.0002.1458);
 - d. version 2.4 dated 12 April 2012 (MFR.1013.0002.1486);
 - e. version 2.5 dated 5 June 2012 (MFR.1013.0002.1500 and MFR.1013.0002.4317);
 - f. version 2.6 dated 14 June 2022 (MFR.1010.0003.0013 and MFR.1013.0002.4331);
 - g. version 2.7 dated 22 November 2022 (MFR.1010.0003.0027);
 - h. version 2.8 dated 18 January 2023 (MFR.1010.0003.0042);
8. MacCap Equities Short Sales Reporting – Process Description:
- a. version 2.9 dated 13 September 2023 (MFR.1006.0004.8140);
 - b. version 3.1 dated 5 December 2023 (MFR.1013.0002.3743).
9. Short Sale Reporting - IT documentation - MSG Short Sales Reporting - Process Description version 2.6 dated 8 August 2012 (MFR.1013.0001.2995; MFR.1013.0001.8351);
10. Short Sale Reporting - IT documentation - COG MOD - Middle Office (ANZ Equity) – Confluence:
- a. dated 2 December 2015 (MFR.1010.0003.0225);

- b. dated 30 May 2023 (MFR.1010.0010.0021);
- c. dated 1 June 2023 (MFR.1010.0003.0070);
- d. dated 13 June 2023 (MFR.1010.0003.0083);
- e. dated 21 June 2023 (MFR.1010.0003.0096);
- f. dated 22 June 2023 (MFR.1010.0003.0110);
- g. dated 23 June 2023 (MFR.1010.0003.0124);
- h. dated 26 June 2023 (MFR.1010.0003.0138);
- i. dated 27 June 2023 (MFR.1010.0003.0154);
- j. dated 28 June 2023 (MFR.1010.0003.0170);
- k. dated 29 June 2023 (MFR.1010.0003.0186);
- l. dated 30 June 2023 (MFR.1010.0003.0203);

11. ASX Short Sell reporting dated 25 October 2013 (MFR.1006.0005.1766);

12. COG MOD - Middle Office (ANZ Equity) > ASX Short Sell Report Log - Confluence:

- a. dated 11 June 2024 (MFR.1013.0002.3921);
- b. dated 23 July 2024 (MFR.1013.0002.3884);
- c. dated 23 July 2024 (MFR.1013.0002.3877);
- d. dated 25 July 2024 (MFR.1013.0002.3100);
- e. dated 25 July 2024 (MFR.1013.0002.3933);
- f. dated 25 July 2024 (MFR.1013.0002.3893);
- g. dated 25 July 2024 (MFR.1013.0002.3833);
- h. dated 7 August 2024 (MFR.1013.0002.2771);
- i. dated 7 August 2024 (MFR.1013.0002.3911).

13. Short Sale Reporting - COG MOD - Middle Office (ANZ Equity) – Confluence:

- a. dated 4 May 2015 (MFR.1013.0002.1626);
- b. dated 6 May 2015 (MFR.1013.0002.1628);
- c. dated 7 May 2015 (MFR.1013.0002.1631);
- d. dated 15 May 2015 (MFR.1013.0002.1617);
- e. dated 3 June 2015 (MFR.1013.0002.1573);
- f. dated 2 July 2015 (MFR.1013.0002.1550);
- g. dated 22 July 2015 (MFR.1013.0002.1563);
- h. dated 30 July 2015 (MFR.1013.0002.1567);
- i. dated 1 September 2015 (MFR.1013.0002.1640);
- j. dated 12 October 2015 (MFR.1013.0002.1688);
- k. dated 20 November 2015 (MFR.1013.0002.1634);
- l. dated 1 December 2015 (MFR.1013.0002.1666);
- m. dated 3 December 2015 (MFR.1013.0002.1682);
- n. dated 2 March 2016 (MFR.1013.0002.1605);
- o. dated 30 March 2016 (MFR.1013.0002.1611);
- p. dated 11 April 2016 (MFR.1013.0002.1525);
- q. dated 31 May 2016 (MFR.1013.0002.1620);
- r. dated 6 June 2016 (MFR.1013.0002.1587);
- s. dated 7 June 2016 (MFR.1013.0002.1596);
- t. dated 17 June 2016 (MFR.1013.0002.1576);
- u. dated 29 September 2016 (MFR.1010.0003.0240 and MFR.1013.0002.1672);
- v. dated 1 February 2017 (MFR.1010.0003.0250 and MFR.1013.0002.1514);
- w. dated 9 April 2018 (MFR.1010.0003.0261 and MFR.1013.0002.1177);

- x. dated 29 August 2018 (MFR.1010.0003.0269 and MFR.1013.0002.1242);
- y. dated 28 February 2019 (MFR.1013.0002.1554 and MFR.1010.0003.0278);
- z. dated 15 July 2019 (MFR.1010.0003.0287 and MFR.1013.0002.1233);
- aa. dated 16 July 2019 (MFR.1010.0003.0296 and MFR.1013.0002.1268);
- bb. dated 19 July 2019 (MFR.1010.0003.0305 and MFR.1013.0002.1277);
- cc. dated 28 August 2019 (MFR.1010.0003.0314 and MFR.1013.0002.1204);
- dd. dated 19 February 2020 (MFR.1010.0003.0325 and MFR.1013.0002.1222);
- ee. dated 29 May 2020 (MFR.1010.0003.0336 and MFR.1013.0002.1315);
- ff. dated 24 July 2020 (MFR.1010.0003.0347 and MFR.1013.0002.1251);
- gg. dated 19 August 2021 (MFR.1010.0003.0364 and MFR.1013.0002.1531);
- hh. dated 4 April 2022 (MFR.1010.0003.0383 and MFR.1013.0002.1185);
- ii. dated 23 November 2022 (MFR.1010.0003.0402 and MFR.1013.0002.1646);
- jj. dated 24 March 2023 (MFR.1010.0003.0422 and MFR.1013.0002.1292);
- kk. dated 2 May 2023 (MFR.1013.0002.1309 and MFR.1010.0003.0439);
- ll. dated 1 June 2023 (MFR.1013.0002.1215, MFR.1010.0003.0233, MFR.1013.0002.1286 and MFR.1010.0003.0445).

14. COG MOD - Middle Office (ANZ Equity) > MacCap Equities Short Sales Reporting – Process Description - Confluence:

- a. dated 10 August 2023 (MFR.1010.0006.8950);
- b. dated 16 August 2023 (MFR.1010.0007.1036);
- c. dated 17 August 2023 (MFR.1010.0007.1248);
- d. dated 18 August 2023 (MFR.1010.0007.1522).

15. Short Selling Guidelines Australia:

- a. version 1 dated 9 October 2013 (MFR.1013.0002.2655);

- b. version 2 dated 23 May 2016 (MFR.1010.0003.0451 and MFR.1013.0002.2649);
- c. version 3 dated 16 May 2018 (MFR.1010.0003.0457);
- d. version 4 dated June 2020 (MFR.1010.0003.0463 and MFR.1006.0001.0452).

16. New Product and Business Approval Policy:

- a. version 5 dated 24 September 2009 (MFR.1013.0002.4034);
- b. version 6 (MFR.1013.0002.4055);
- c. version 7 dated 29 September 2011 (MFR.1013.0002.4094);
- d. version 8 dated 29 August 2012 (MFR.1013.0002.4074);
- e. version 9 dated 28 August 2013 (MFR.1013.0002.4114);
- f. version 9.1 dated 30 September 2013 (MFR.1013.0002.4135);
- g. version 9.2 dated 20 December 2013 (MFR.1013.0002.4155);
- h. version 9.3 dated 5 March 2014 (MFR.1013.0002.4176);
- i. version 9.4 dated 9 April 2015 (MFR.1013.0002.4219);
- j. version 10 dated 15 July 2015 (MFR.1013.0002.4197);
- k. version 11 dated 17 November 2015 (MFR.1013.0002.4240);
- l. version 12 dated 5 August 2016 (MFR.1013.0002.4262 and MFR.1010.0003.0515);
- m. version 13 dated August 2017 (MFR.1010.0003.0533 and MFR.1013.0002.4281);
- n. version 14 dated August 2018 (MFR.1010.0003.0552);
- o. version 15 dated October 2019 (MFR.1010.0003.0572);
- p. version 16 dated October 2020 (MFR.1010.0003.0595);
- q. version 17 dated December 2021 (MFR.1010.0003.0621);
- r. Version 17.1 dated May 2022 (MFR.1010.0010.0003);
- s. version 18 dated October 2022 (MFR.1010.0003.0640);

- t. version 18.1 dated May 2023 (MFR.1010.0003.0661);
- u. version 19 dated October 2023 (MFR.1006.0001.0963).

17. Material Cross-Group Change Initiative Standard:

- a. version 1 (MFR.1013.0002.1348);
- b. version 1.1 dated September 2022 (MFR.1013.0002.1326);
- c. version 1.2 dated December 2022 (MFR.1013.0002.1371);
- d. version 1.3 dated April 2023 (MFR.1013.0002.1395);
- e. version 1.4 dated July 2023 (MFR.1013.0002.1421).

18. NPA for Projects Standard:

- a. version 1 dated November 2021 (MFR.1013.0002.2635);
- b. version 2 dated October 2022 (MFR.1013.0002.2642).

19. Standard for NPA Proposal Papers:

- a. version 1 dated December 2021 (MFR.1013.0002.2660);
- b. version 2 dated October 2022 (MFR.1013.0002.2667).

20. NPA Post-Implementation-Review Guide (MFR.1013.0002.3957);

21. Guidance: How to refresh stale NPAs:

- a. version 1 dated August 2018 (MFR.1013.0002.4280);
- b. version 1.1 dated October 2022 (MFR.1013.0002.4300).

22. NPBA Guidance – Considerations in Selling or Exiting a Business (version 1) dated June 2020 (MFR.1013.0002.4302);

23. NPBA Milestones Guidance (version 1.0) dated 18 November 2015 (MFR.1013.0002.4311);

24. Regulatory Reporting Policy:

- a. version 1.1 dated 24 May 2019 (approved on 23 August 2017) (MFR.1010.0003.0468 and MFR.1013.0002.3960);

- b. version 1.2 dated 27 November 2019 (MFR.1021.0001.0008)
- c. version 1.3 dated 11 December 2020 (MFR.1010.0003.0475);
- d. version 1.4 dated 28 September 2021 (MFR.1010.0003.0481);
- e. version 2 dated 29 September 2022 (MFR.1010.0003.0488);
- f. version 2.1 dated 22 June 2023 (MFR.1010.0003.0497);
- g. version 3 dated 4 October 2023 (MFR.1010.0003.0506 and MFR.1006.0001.0984);

25. Regulatory Reporting Policy Guidance:

- a. version 1.0 dated 20 December 2018 (MFR.1010.0003.0727);
- b. version 2.0 dated February 2019 (MFR.1010.0003.0741);
- c. version 2.5 dated April 2019 (MFR.1010.0003.0764);
- d. version 2.6 dated May 2019 (MFR.1010.0003.0786);
- e. version 2.7 dated August 2019 (MFR.1010.0003.0808);
- f. version 2.8 dated August 2019 (MFR.1010.0003.0848);
- g. version 2.9 dated November 2019 (MFR.1010.0003.0886);
- h. version 3.0 dated July 2020 (MFR.1010.0003.0925);
- i. version 4.0 dated May 2021 (MFR.1010.0003.0957);
- j. version 4.1 dated May 2022 (MFR.1010.0003.0989);
- k. version 4.2 dated November 2022 (MFR.1010.0003.1021);
- l. version 4.3 dated November 2023 (MFR.1010.0003.1055).

26. Australian Cash Equities Account Onboarding Procedure:

- a. dated August 2021 (MFR.1005.0002.4731 and MFR.1005.0001.0276);
- b. dated June 2023 (MFR.1005.0001.0287).

27. Short Sale Reporting Procedure created on 22 April 2015 and reviewed on 24 July 2020

(MFR.1006.0001.0506; MFR.1006.0001.0531; MFR.1006.0001.0556;
MFR.1006.0001.0581; MFR.1006.0001.0606; MFR.1006.0001.0631; MFR.1006.0001.0656;
MFR.1006.0001.0681; MFR.1006.0001.0706; MFR.1006.0001.0731; MFR.1006.0001.0756;
MFR.1006.0001.0781; MFR.1006.0001.0483);

28. MCA Equities Australia Compliance Monitoring Programme:

- a. version 2.0 dated April 2012 (MFR.1013.0002.1876);
- b. version 2.1 dated January 2013 (MFR.1013.0002.1976);
- c. version 3.1 dated 30 October 2013 (MFR.1013.0002.2253);
- d. version 3.2 dated 27 December 2013 (MFR.1013.0002.2236);
- e. version 3.3 dated 31 March 2014 (MFR.1013.0002.2268);
- f. version 3.3b dated 16 May 2014 (MFR.1013.0002.2304);
- g. version 3.3c dated 21 May 2014 (MFR.1013.0002.2285);
- h. version 4.0 dated 16 July 2014 (MFR.1013.0002.2497);
- i. version 5.0 dated 16 December 2016 (MFR.1013.0002.2517);
- j. version 6.0 dated 4 July 2016 (MFR.1013.0002.2543);
- k. version 7.0 dated 21 July 2016 (MFR.1013.0002.2566);
- l. version 8.0 dated May 2017 (MFR.1013.0002.2590);
- m. version 9.0 dated July 2017 (MFR.1013.0002.2613);
- n. version 10 dated 20 February 2018 (MFR.1013.0002.1694);
- o. version 11 dated 7 November 2018 (MFR.1013.0002.1724);
- p. version 12 dated 27 February 2019 (MFR.1013.0002.1708);
- q. version 13 dated 17 June 2019 (MFR.1013.0002.1752);
- r. version 14 dated 28 August 2019 (MFR.1013.0002.1739);
- s. version 15 dated 13 July 2020 (MFR.1013.0002.1808);

- t. version 16 dated August 2020 (MFR.1013.0002.1765);
- u. version 17 dated October 2020 (MFR.1013.0002.1786);
- v. version 18 dated October 2020 (MFR.1013.0002.1827);
- w. version 19 dated April 2021 (MFR.1013.0002.1850);
- x. version 20 dated May 2021 (MFR.1013.0002.1946);
- y. version 21 dated September 2021 (MFR.1013.0002.1917);
- z. version 22 dated October 2021 (MFR.1013.0002.2019);
- aa. version 23 dated November 2021 (MFR.1013.0002.2049);
- bb. version 24 dated December 2021 (MFR.1013.0002.2076);
- cc. version 25 dated December 2021 (MFR.1013.0002.2102);
- dd. version 26 dated January 2022 (MFR.1013.0002.2155);
- ee. version 27 dated February 2022 (MFR.1013.0002.2128)
- ff. version 28 dated April 2022 (MFR.1013.0002.2182);
- gg. version 29 dated May 2022 (MFR.1013.0002.2209);
- hh. version 30 dated June 2022 (MFR.1013.0002.2322);
- ii. version 31 dated July 2022 (MFR.1013.0002.2348);
- jj. version 32 dated November 2022 (MFR.1013.0002.2375 and MFR.1006.0001.1022);
- kk. version 33 dated December 2022 (MFR.1013.0002.2405);
- ll. version 34 dated December 2022 (MFR.1013.0002.2435);
- mm. version 35 dated November 2023 (MFR.1013.0002.2465);
- nn. version 36 dated December 2023 (MFR.1013.0002.2806).

29. Incidents & Issues Policy (version 12) dated November 2022 (MFR.1006.0001.1049);

30. Equities Compliance Manual:

- a. version 15 dated February 2022 (MFR.1006.0001.0893);
- b. dated February 2023 (MFR.1005.0001.0298 and MFR.1006.0001.0860).

31. MSAL and Macquarie Securities (NZ) Limited Terms and Conditions of Business:

- a. dated April 2016 (MFR.1010.0003.1088);
- b. dated August 2017 (MFR.1010.0003.1128);
- c. dated October 2017 (MFR.1010.0003.1109);
- d. dated October 2018 (MFR.1010.0003.1309);
- e. dated March 2020 (MFR.1010.0003.1328);
- f. dated January 2022 (MFR.1010.0003.1355, MFR.1010.0003.1408);
- g. dated February 2023 (MFR.1010.0003.1224);
- h. dated October 2023 (MFR.1010.0003.1257).

Annexure B

The relevant Short Sale Reports were lodged by MSAL for each of the trading dates identified in the following table:

14/05/2019	13/11/2019	21/05/2020	20/11/2020	01/06/2021	01/12/2021	10/06/2022	13/12/2022
15/05/2019	14/11/2019	22/05/2020	23/11/2020	02/06/2021	02/12/2021	14/06/2022	14/12/2022
16/05/2019	15/11/2019	25/05/2020	24/11/2020	03/06/2021	03/12/2021	15/06/2022	15/12/2022
17/05/2019	18/11/2019	26/05/2020	25/11/2020	04/06/2021	06/12/2021	16/06/2022	16/12/2022
20/05/2019	19/11/2019	27/05/2020	26/11/2020	07/06/2021	07/12/2021	17/06/2022	19/12/2022
21/05/2019	20/11/2019	28/05/2020	27/11/2020	08/06/2021	08/12/2021	20/06/2022	20/12/2022
22/05/2019	21/11/2019	29/05/2020	30/11/2020	09/06/2021	09/12/2021	21/06/2022	21/12/2022
23/05/2019	22/11/2019	01/06/2020	01/12/2020	10/06/2021	10/12/2021	22/06/2022	09/08/2023
24/05/2019	25/11/2019	02/06/2020	02/12/2020	11/06/2021	13/12/2021	23/06/2022	
27/05/2019	26/11/2019	03/06/2020	03/12/2020	15/06/2021	14/12/2021	24/06/2022	
28/05/2019	27/11/2019	04/06/2020	04/12/2020	16/06/2021	15/12/2021	27/06/2022	
29/05/2019	28/11/2019	05/06/2020	07/12/2020	17/06/2021	16/12/2021	28/06/2022	
30/05/2019	29/11/2019	09/06/2020	08/12/2020	18/06/2021	17/12/2021	29/06/2022	
31/05/2019	02/12/2019	10/06/2020	09/12/2020	21/06/2021	20/12/2021	30/06/2022	
03/06/2019	03/12/2019	11/06/2020	10/12/2020	22/06/2021	21/12/2021	01/07/2022	
04/06/2019	04/12/2019	12/06/2020	11/12/2020	23/06/2021	22/12/2021	04/07/2022	
05/06/2019	05/12/2019	15/06/2020	14/12/2020	24/06/2021	23/12/2021	05/07/2022	
06/06/2019	06/12/2019	16/06/2020	15/12/2020	25/06/2021	24/12/2021	06/07/2022	
07/06/2019	09/12/2019	17/06/2020	16/12/2020	28/06/2021	29/12/2021	07/07/2022	
11/06/2019	10/12/2019	18/06/2020	17/12/2020	29/06/2021	30/12/2021	08/07/2022	
12/06/2019	11/12/2019	19/06/2020	18/12/2020	30/06/2021	31/12/2021	11/07/2022	
13/06/2019	12/12/2019	22/06/2020	21/12/2020	01/07/2021	04/01/2022	12/07/2022	
14/06/2019	13/12/2019	23/06/2020	22/12/2020	02/07/2021	05/01/2022	13/07/2022	
17/06/2019	16/12/2019	24/06/2020	23/12/2020	05/07/2021	06/01/2022	14/07/2022	
18/06/2019	17/12/2019	25/06/2020	24/12/2020	06/07/2021	07/01/2022	15/07/2022	
19/06/2019	18/12/2019	26/06/2020	29/12/2020	07/07/2021	10/01/2022	18/07/2022	
20/06/2019	19/12/2019	29/06/2020	30/12/2020	08/07/2021	11/01/2022	19/07/2022	
21/06/2019	20/12/2019	30/06/2020	31/12/2020	09/07/2021	12/01/2022	20/07/2022	
24/06/2019	23/12/2019	01/07/2020	04/01/2021	12/07/2021	13/01/2022	21/07/2022	
25/06/2019	24/12/2019	02/07/2020	05/01/2021	13/07/2021	14/01/2022	22/07/2022	
26/06/2019	27/12/2019	03/07/2020	06/01/2021	14/07/2021	17/01/2022	25/07/2022	
27/06/2019	30/12/2019	06/07/2020	07/01/2021	15/07/2021	18/01/2022	26/07/2022	
28/06/2019	31/12/2019	07/07/2020	08/01/2021	16/07/2021	19/01/2022	27/07/2022	
01/07/2019	02/01/2020	08/07/2020	11/01/2021	19/07/2021	20/01/2022	28/07/2022	
02/07/2019	03/01/2020	09/07/2020	12/01/2021	20/07/2021	21/01/2022	29/07/2022	
03/07/2019	06/01/2020	10/07/2020	13/01/2021	21/07/2021	24/01/2022	01/08/2022	
04/07/2019	07/01/2020	13/07/2020	14/01/2021	22/07/2021	25/01/2022	02/08/2022	

05/07/2019	08/01/2020	14/07/2020	15/01/2021	23/07/2021	27/01/2022	03/08/2022
08/07/2019	09/01/2020	15/07/2020	18/01/2021	26/07/2021	28/01/2022	04/08/2022
09/07/2019	10/01/2020	16/07/2020	19/01/2021	27/07/2021	31/01/2022	05/08/2022
10/07/2019	13/01/2020	17/07/2020	20/01/2021	28/07/2021	01/02/2022	08/08/2022
11/07/2019	14/01/2020	20/07/2020	21/01/2021	29/07/2021	02/02/2022	09/08/2022
12/07/2019	15/01/2020	21/07/2020	22/01/2021	30/07/2021	03/02/2022	10/08/2022
15/07/2019	16/01/2020	22/07/2020	25/01/2021	02/08/2021	04/02/2022	11/08/2022
16/07/2019	17/01/2020	23/07/2020	27/01/2021	03/08/2021	07/02/2022	12/08/2022
17/07/2019	20/01/2020	24/07/2020	28/01/2021	04/08/2021	08/02/2022	15/08/2022
18/07/2019	21/01/2020	27/07/2020	29/01/2021	05/08/2021	09/02/2022	16/08/2022
19/07/2019	22/01/2020	28/07/2020	01/02/2021	06/08/2021	10/02/2022	17/08/2022
22/07/2019	23/01/2020	29/07/2020	02/02/2021	09/08/2021	11/02/2022	18/08/2022
23/07/2019	24/01/2020	30/07/2020	03/02/2021	10/08/2021	14/02/2022	19/08/2022
24/07/2019	28/01/2020	31/07/2020	04/02/2021	11/08/2021	15/02/2022	22/08/2022
25/07/2019	29/01/2020	03/08/2020	05/02/2021	12/08/2021	16/02/2022	23/08/2022
26/07/2019	30/01/2020	04/08/2020	08/02/2021	13/08/2021	17/02/2022	24/08/2022
29/07/2019	31/01/2020	05/08/2020	09/02/2021	16/08/2021	18/02/2022	25/08/2022
30/07/2019	03/02/2020	06/08/2020	10/02/2021	17/08/2021	21/02/2022	26/08/2022
31/07/2019	04/02/2020	07/08/2020	11/02/2021	18/08/2021	22/02/2022	29/08/2022
01/08/2019	05/02/2020	10/08/2020	12/02/2021	19/08/2021	23/02/2022	30/08/2022
02/08/2019	06/02/2020	11/08/2020	15/02/2021	20/08/2021	24/02/2022	31/08/2022
05/08/2019	07/02/2020	12/08/2020	16/02/2021	23/08/2021	25/02/2022	01/09/2022
06/08/2019	10/02/2020	13/08/2020	17/02/2021	24/08/2021	28/02/2022	02/09/2022
07/08/2019	11/02/2020	14/08/2020	18/02/2021	25/08/2021	01/03/2022	05/09/2022
08/08/2019	12/02/2020	17/08/2020	19/02/2021	26/08/2021	02/03/2022	06/09/2022
09/08/2019	13/02/2020	18/08/2020	22/02/2021	27/08/2021	03/03/2022	07/09/2022
12/08/2019	14/02/2020	19/08/2020	23/02/2021	30/08/2021	04/03/2022	08/09/2022
13/08/2019	17/02/2020	20/08/2020	24/02/2021	31/08/2021	07/03/2022	09/09/2022
14/08/2019	18/02/2020	21/08/2020	25/02/2021	01/09/2021	08/03/2022	12/09/2022
15/08/2019	19/02/2020	24/08/2020	26/02/2021	02/09/2021	09/03/2022	13/09/2022
16/08/2019	20/02/2020	25/08/2020	01/03/2021	03/09/2021	10/03/2022	14/09/2022
19/08/2019	21/02/2020	26/08/2020	02/03/2021	06/09/2021	11/03/2022	15/09/2022
20/08/2019	24/02/2020	27/08/2020	03/03/2021	07/09/2021	14/03/2022	16/09/2022
21/08/2019	25/02/2020	28/08/2020	04/03/2021	08/09/2021	15/03/2022	19/09/2022
22/08/2019	26/02/2020	31/08/2020	05/03/2021	09/09/2021	16/03/2022	20/09/2022
23/08/2019	27/02/2020	01/09/2020	08/03/2021	10/09/2021	17/03/2022	21/09/2022
26/08/2019	28/02/2020	02/09/2020	09/03/2021	13/09/2021	18/03/2022	23/09/2022
27/08/2019	02/03/2020	03/09/2020	10/03/2021	14/09/2021	21/03/2022	26/09/2022
28/08/2019	03/03/2020	04/09/2020	11/03/2021	15/09/2021	22/03/2022	27/09/2022
29/08/2019	04/03/2020	07/09/2020	12/03/2021	16/09/2021	23/03/2022	28/09/2022
30/08/2019	05/03/2020	08/09/2020	15/03/2021	17/09/2021	24/03/2022	29/09/2022
02/09/2019	06/03/2020	09/09/2020	16/03/2021	20/09/2021	25/03/2022	30/09/2022
03/09/2019	09/03/2020	10/09/2020	17/03/2021	21/09/2021	28/03/2022	03/10/2022
04/09/2019	10/03/2020	11/09/2020	18/03/2021	22/09/2021	29/03/2022	04/10/2022
05/09/2019	11/03/2020	14/09/2020	19/03/2021	23/09/2021	30/03/2022	05/10/2022

06/09/2019	12/03/2020	15/09/2020	22/03/2021	24/09/2021	31/03/2022	06/10/2022
09/09/2019	13/03/2020	16/09/2020	23/03/2021	27/09/2021	01/04/2022	07/10/2022
10/09/2019	16/03/2020	17/09/2020	24/03/2021	28/09/2021	04/04/2022	10/10/2022
11/09/2019	17/03/2020	18/09/2020	25/03/2021	29/09/2021	05/04/2022	11/10/2022
12/09/2019	18/03/2020	21/09/2020	26/03/2021	30/09/2021	06/04/2022	12/10/2022
13/09/2019	19/03/2020	22/09/2020	29/03/2021	01/10/2021	07/04/2022	13/10/2022
16/09/2019	20/03/2020	23/09/2020	30/03/2021	04/10/2021	08/04/2022	14/10/2022
17/09/2019	23/03/2020	24/09/2020	31/03/2021	05/10/2021	11/04/2022	17/10/2022
18/09/2019	24/03/2020	25/09/2020	01/04/2021	06/10/2021	12/04/2022	18/10/2022
19/09/2019	25/03/2020	28/09/2020	06/04/2021	07/10/2021	13/04/2022	19/10/2022
20/09/2019	26/03/2020	29/09/2020	07/04/2021	08/10/2021	14/04/2022	20/10/2022
23/09/2019	27/03/2020	30/09/2020	08/04/2021	11/10/2021	19/04/2022	21/10/2022
24/09/2019	30/03/2020	01/10/2020	09/04/2021	12/10/2021	20/04/2022	24/10/2022
25/09/2019	31/03/2020	02/10/2020	12/04/2021	13/10/2021	21/04/2022	25/10/2022
26/09/2019	01/04/2020	05/10/2020	13/04/2021	14/10/2021	22/04/2022	26/10/2022
27/09/2019	02/04/2020	06/10/2020	14/04/2021	15/10/2021	26/04/2022	27/10/2022
30/09/2019	03/04/2020	07/10/2020	15/04/2021	18/10/2021	27/04/2022	28/10/2022
01/10/2019	06/04/2020	08/10/2020	16/04/2021	19/10/2021	28/04/2022	31/10/2022
02/10/2019	07/04/2020	09/10/2020	19/04/2021	20/10/2021	29/04/2022	01/11/2022
03/10/2019	08/04/2020	12/10/2020	20/04/2021	21/10/2021	02/05/2022	02/11/2022
04/10/2019	09/04/2020	13/10/2020	21/04/2021	22/10/2021	03/05/2022	03/11/2022
07/10/2019	14/04/2020	14/10/2020	22/04/2021	25/10/2021	04/05/2022	04/11/2022
08/10/2019	15/04/2020	15/10/2020	23/04/2021	26/10/2021	05/05/2022	07/11/2022
09/10/2019	16/04/2020	16/10/2020	27/04/2021	27/10/2021	06/05/2022	08/11/2022
10/10/2019	17/04/2020	19/10/2020	28/04/2021	28/10/2021	09/05/2022	09/11/2022
11/10/2019	20/04/2020	20/10/2020	29/04/2021	29/10/2021	10/05/2022	10/11/2022
14/10/2019	21/04/2020	21/10/2020	30/04/2021	01/11/2021	11/05/2022	11/11/2022
15/10/2019	22/04/2020	22/10/2020	03/05/2021	02/11/2021	12/05/2022	14/11/2022
16/10/2019	23/04/2020	23/10/2020	04/05/2021	03/11/2021	13/05/2022	15/11/2022
17/10/2019	24/04/2020	26/10/2020	05/05/2021	04/11/2021	16/05/2022	16/11/2022
18/10/2019	27/04/2020	27/10/2020	06/05/2021	05/11/2021	17/05/2022	17/11/2022
21/10/2019	28/04/2020	28/10/2020	07/05/2021	08/11/2021	18/05/2022	18/11/2022
22/10/2019	29/04/2020	29/10/2020	10/05/2021	09/11/2021	19/05/2022	21/11/2022
23/10/2019	30/04/2020	30/10/2020	11/05/2021	10/11/2021	20/05/2022	22/11/2022
24/10/2019	01/05/2020	02/11/2020	12/05/2021	11/11/2021	23/05/2022	23/11/2022
25/10/2019	04/05/2020	03/11/2020	13/05/2021	12/11/2021	24/05/2022	24/11/2022
28/10/2019	05/05/2020	04/11/2020	14/05/2021	15/11/2021	25/05/2022	25/11/2022
29/10/2019	06/05/2020	05/11/2020	17/05/2021	16/11/2021	26/05/2022	28/11/2022
30/10/2019	07/05/2020	06/11/2020	18/05/2021	17/11/2021	27/05/2022	29/11/2022
31/10/2019	08/05/2020	09/11/2020	19/05/2021	18/11/2021	30/05/2022	30/11/2022
01/11/2019	11/05/2020	10/11/2020	20/05/2021	19/11/2021	31/05/2022	01/12/2022
04/11/2019	12/05/2020	11/11/2020	21/05/2021	22/11/2021	01/06/2022	02/12/2022
05/11/2019	13/05/2020	12/11/2020	24/05/2021	23/11/2021	02/06/2022	05/12/2022
06/11/2019	14/05/2020	13/11/2020	25/05/2021	24/11/2021	03/06/2022	06/12/2022
07/11/2019	15/05/2020	16/11/2020	26/05/2021	25/11/2021	06/06/2022	07/12/2022

08/11/2019	18/05/2020	17/11/2020	27/05/2021	26/11/2021	07/06/2022	08/12/2022
11/11/2019	19/05/2020	18/11/2020	28/05/2021	29/11/2021	08/06/2022	09/12/2022
12/11/2019	20/05/2020	19/11/2020	31/05/2021	30/11/2021	09/06/2022	12/12/2022

Annexure C

Glossary of Key Terms

Term	Meaning
2015 Incident	The short sale reporting issue(s) reported by MSAL to ASIC by letter on 10 July 2015 pursuant to s 912D of the Corporations Act.
2019 Audit	An Internal Audit Review conducted by MSAL in 2019 which tested the submission process for the Short Sale Reports as well as the associated controls.
2019 Incident	The short sale reporting issues: <ul style="list-style-type: none"> (a) reported by MSAL to ASIC by letter on 1 July 2019 pursuant to s912D of the Corporations Act; (b) identified in MSAL's email to ASX Limited dated 28 October 2022, with subject line '<i>RE: [External] Notification of Breach – 01377590</i>'; or (c) identified in MSAL's letter to ASIC dated 2 September 2024, with subject line '<i>Response to Notice of Direction issued under section 912C(1) of the Corporations Act 2001 (Cth)</i>'.
2018 Review	A high-level review conducted by MSAL of its short sale reporting accuracy as part of a groupwide review of Macquarie Group's short selling reports.
Additional Regulatory Reporting Control	Control implemented by MSAL in relation to the Regulatory Reporting Process following the identification of Issue 10 in March 2023.
Additional Short Sale Controls	Controls implemented by MSAL in relation to the Short Sale Reporting Process following the identification of Issues 1 to 9.
AFSL	Australian Financial Services Licence numbered 238947
AFSL Number Duty	The requirement for MSAL to report to a Market Operator the AFSL number of the AFSL holder for each side (buy and/or sell) of an order or transaction on which: <ul style="list-style-type: none"> (a) MSAL acted as agent for an AOP Client that is an AFSL holder; and (b) MSAL had an arrangement with the AFSL holder under which the AFSL holder was permitted to submit Trading Messages into MSAL's system as intermediary for its own clients.
Agency Adjustments and Reconciliation	<p>The process by which:</p> <ul style="list-style-type: none"> (a) the total volume of Agency Short Sales which had been separated in the IT Portal Separation was then automatically reconciled in the IT Portal against information recorded in Fidessa in relation to "high touch" agency orders; (b) once the above reconciliation was completed, if necessary, the total volume of Agency Short Sales was adjusted automatically in the IT Portal to reflect the total volume of Agency Short Sales in Fidessa. <p>All principal trades, "booking purpose trades" and low-touch agency orders were excluded from this reconciliation process.</p>

Term	Meaning
Agency Short Sales	Covered short sales that MSAL transacted during the Relevant Period on behalf of clients.
AOP Client	As defined in r 1.4.3 of the Securities Markets Rules
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i> (Cth)
ASX	The financial market known as 'ASX' operated by ASX Limited (ACN 008 624 691)
ASX Market Period	1 August 2010 up to and including 14 February 2024
ASX Market Rules	The operating rules of ASX Limited in force up to and including 31 July 2010 (subsequently replaced by the ASX Operating Rules on and from 1 August 2010)
ASX Online	The website platform operated by ASX Limited (ACN 008 624 691) located at www.asxonline.com
ASX Operating Rules	The Operating Rules (formerly known as the Market Rules), forming part of the operating rules of ASX Limited (ACN 008 624 691), as amended from time to time
ASX Operating Rules Procedures	The Procedures to the ASX Operating Rules, as amended from time to time
ASX Rules	<i>ASIC Market Integrity Rules (ASX Market) 2010</i> (Cth)
Booking purpose trades	<p>Used by MSAL's back office for internal accounting and book-keeping purposes, used by brokers to move stock from one broker account to another account internally and are not visible to other market participants.</p> <p>For example, this might occur in the context of correcting a client's identification on a trade, volume splitting, price changes or moving stock from one client account to another.</p> <p>Booking purpose trades are not 'real' transactions.</p>
BORM Team	MSAL's Business Operational Risk Management Team during the Relevant Period, comprised of both a Corporate Operations Group BORM team and an Equities BORM team
Business Compliance Team	MSAL's Business Compliance Team during the Relevant Period
Business Management Team	MSAL's Business Management Team during the Relevant Period
Calypso	A middle-office platform utilised for booking Principal equity risk.
Cboe	The financial market known as 'Cboe Australia' operated by Cboe Australia Pty Limited ACN 129 584 667 (formerly known as Chi-X Limited)
Cboe Market Period	4 May 2011 up to and including 14 February 2024
Cboe Operating Rules	The Operating Rules forming part of the operating rules of Cboe Australia Pty Limited ACN 129 584 667 (formerly known as Chi-X Limited), as amended from time to time
Cboe Operating Rules Procedures	The Procedures to the Cboe Operating Rules, as amended from time to time
Chi-X Rules	<i>ASIC Market Integrity Rules (Chi-X Australia Market) 2011</i>
CHESS	ASX Clearing House Electronic Sub-register System

Term	Meaning
CGM GDO/COG MOD Periodic Assurance Review	One of MSAL's reviews of its Short Sale Reporting Controls, which: <ul style="list-style-type: none"> (a) was completed in December 2021; (b) was conducted by MSAL's Corporate Operations MOD Team in conjunction with relevant stakeholders from the COG Operations, Equities Business and Compliance teams; (c) was for the stated purpose of reviewing the Short Sale Report to ensure the reporting process design, data definition and controls were kept up-to date and remained appropriate; and (d) involved an assessment of how the Regulatory Reporting Policy was implemented, in relation to: <ul style="list-style-type: none"> (i) roles, responsibilities and accountabilities of key personnel involved in the process; (ii) review over interpretations and assumptions; (iii) documentation and understanding over data sourcing and technology controls; (iv) management oversight and overall change management; and (v) assurance.
COG	Corporate Operations Group
Compliance Monitoring	One of MSAL's controls which: <ul style="list-style-type: none"> (a) was implemented in June 2020; and (b) involved a monthly review by MSAL's Business Compliance team of the screenshots contained in the End of Day Sign-Off Emails.
Contravention Period	14 May 2019 to 14 February 2024
Corporations Act	<i>Corporations Act 2001</i> (Cth)
Corporations Regulations	<i>Corporations Regulations 2001</i> (Cth)
Covered short sale	Includes where a person executes a short sale of a security and relies on an existing securities lending arrangement (within the meaning of s 1020AA of the Corporations Act) to have a presently exercisable and unconditional right to vest the security in the buyer at the time of the sale.
Crossing	As defined by r 1.4.3 of the Securities Markets Rules, a transaction in respect of which a trading participant acts: <ul style="list-style-type: none"> (a) on behalf of both buying and selling clients to that transaction; or (b) on behalf of a buying or selling client on one side of that transaction and as a Principal on the other side.
Daily Short Sell Orders Report	One of MSAL's controls which: <ul style="list-style-type: none"> (a) was implemented in August 2019; (b) was intended to identify potential duplication, at a client level, of short sell reporting for "high touch" or "program trading" orders.
DAS	Macquarie Group's Document Approval System
DAS Summary	A summary of information recorded in a request for approval in DAS relating to the set-up of new client trading accounts, or changes made to existing client trading accounts, which included: <ul style="list-style-type: none"> (a) the requester's name; (b) the relevant Macquarie Group booking entity;

Term	Meaning
	<ul style="list-style-type: none"> (c) the capacity of the client; and (d) whether the client was an intermediary and, if so, its AFSL number.
DMA	In relation to an order trade, “direct market access”, where an order or orders is or are entered on the exchange directly via a broker’s systems, without the assistance of a sales trader.
Eagle Eye Check	<p>One of MSAL’s Regulatory Reporting Controls, which comprised the following automatically generated emails:</p> <ul style="list-style-type: none"> (a) an email sent twice daily, at 9:00AM and 4:15PM, designed to identify any changes made to particular data fields used by the Market Gateway, including AFSL number; (b) an email sent once daily at 4:15PM identifying any discrepancy between the static data uploaded to the Market Gateway and the data sent in Orders and Trade Reports; and (c) an email sent once daily at 4:15PM containing the regulatory data fields for all trades for the day, including the intermediary flag (with AFSL number), which was reviewed by the front office team for the purpose of identifying whether there may be incorrect tagging.
End of Day Sign-Off Email	<p>One of MSAL’s controls which:</p> <ul style="list-style-type: none"> (a) was implemented in September 2015; and (b) required the MOD Team to send a daily email to key stakeholders within MSAL together with a screenshot recording the successful submission to the Market Operator of the Short Sale Report.
End to End Review of Short Sale Report	<p>One of MSAL’s reviews of its Short Sale Reporting Controls, which:</p> <ul style="list-style-type: none"> (a) was conducted for the first time in or around 2023 and completed in December 2023; (b) involved Data Officers in Macquarie Capital conducting a walk-through of its Short Sale Reporting Process and Short Sale Report Controls with the Report owner, and other relevant stakeholders involved in the process including the Front Office, Technology, BORM and Compliance teams, for the purpose of: <ul style="list-style-type: none"> (i) confirming that the Short Sale Reporting Process and Short Sale Report Controls complied with the Regulatory Reporting Policy; (ii) self-assessing the design, performance and overall effectiveness of Short Sale Report Controls; and (iii) confirming that designated ‘critical data elements’, including the gross Short Sale volume, had been mapped (meaning that they were tracked and/or documented) and that ‘end-to-end’ lineage for the relevant data had been documented.
Fenergo	Macquarie Group’s client onboarding system

Term	Meaning
Fidessa	A front-office order management and execution platform.
Fidessa AMMA	The Market Gateway system used by MSAL until on or about 31 March.
Final report submission	The process by which after any manual adjustments had been made, MSAL's Middle Office Team: <ul style="list-style-type: none"> (a) extracted the final Short Sale Report from the IT Portal; and (b) uploaded and submitted the Short Sale Report to the relevant Market Operator.
First RSR	MSAL's notification to ASIC dated 2 December 2022 of a reportable situation in relation to the incorrect Short Sale Reports it had submitted to the Market Operator which it had identified on 5 October 2022.
FIS	The Market Gateway system used by MSAL which replaced Fidessa AMMA.
Four-Eye Check	One of MSAL's controls which: <ul style="list-style-type: none"> (a) was implemented in July 2015; and (b) involved a member of the MOD Team, designated as a "checker", confirming that the Short Sale Report had been submitted on time to the relevant Market Operator.
FNZ	Vendor of SYNANG
High touch agency orders	An order by which a client contacts a sales trader and that trader assists with the execution process
HSBC	Hong Kong and Shanghai Banking Corporation Limited
i-Broker	A system used by the Macquarie Group to meet market operations and financial accounting requirements, which was also connected to CHESS and used to clear and settle trades.
Intermediary ID	The AFSL number required to be reported for Trade Reports and/or Orders provided to the Market Operator.
Issue 1	The logic used to generate the Short Sale Report had incorrectly included duplicate "dummy fills" as actual covered short sale transactions in the Report.
Issue 2	The logic used to generate the Short Sale Report incorrectly truncated trade references used to calculate the volume of covered short sale transactions for the purposes of the Report, which resulted in trades with cross-references of four or more characters being excluded from the calculation of the total volume of covered short sale transactions.
Issue 3	The logic used to generate the Short Sale Report incorrectly included booking purpose trades executed on Cboe Australia in the calculation of MSAL's covered short sale transactions for the purposes of the Report.
Issue 4	The logic used to generate the Short Sale Report incorrectly excluded "unbooked principal positions" from the process of calculating the total volume of Principal Short Trades for the purposes of the Report.
Issue 5	The logic used to generate the Short Sale Report incorrectly excluded Principal buy trades in the execution of the Principal Replay Function where a "crossing" was executed on the ASX Market where: <ul style="list-style-type: none"> (a) the buy-side related to a Principal account; and

Term	Meaning
	(b) the sell-side was an Agency client account which was not a short sale.
Issue 6	The logic used to generate the Short Sale Report incorrectly replayed, as part of the Principal Replay Function, all principal trades on the ASX first and then all principal trades on Cboe Australia, rather than replaying all principal trades conducted on either the ASX or Cboe Australia in chronological order.
Issue 7	During the period from 11 December 2009 to 14 February 2024, the Short Sale Reports submitted by MSAL to the Market Operator did not always include: <ul style="list-style-type: none"> (a) Principal market crossing trades completed after 5:00PM; (b) Agency short sale market crossing trades completed after 5:00PM; or (c) amendments made to Agency trades in Fidessa, that were made after 5:00PM.
Issue 8	During the period from 11 December 2009 to 2 February 2023, the Short Sale Reports submitted by MSAL to the Market Operator were affected by an incorrect automatic adjustment process that was applied in the IT Portal when a manual intraday booking was made by MSAL's Market Operations Divisions Team in Fidessa for a short sell DMA trade.
Issue 9	During the period from 11 December 2019 to 15 May 2023, some of the Short Sale Reports submitted by MSAL to the Market Operator were extracted prior to the completion of the data extraction process in the IT Portal, and, accordingly, were incomplete.
Issue 10	During the period from 16 November 2022 and 21 March 2023, MSAL failed to provide the AFSL number (intermediary ID) for a total of 633,680 Orders provided to the Market Operator.
IT Portal	An internally hosted web-based application used by various Macquarie Group trading divisions to deliver functions including client and regulatory report generation.
IT Portal Separation	The process by which once data had been collected and imported in the SYNANG Collection, the IT Portal separated data relating to principal trades from data relating to agency trades.
Logic	The sequence of operations within the computer software that manage the data and flow of a program so that the software can make decisions and provide specific relevant information and outputs.
Macquarie Capital	Macquarie Capital (Australia) Limited ACN 123 199 548
Macquarie Group	Macquarie Group Limited ACN 122 169 279
Maker-Checker Authorisation of Manual Adjustments	One of MSAL's controls which: <ul style="list-style-type: none"> (a) was implemented in August 2018; (b) was intended to ensure the accuracy of the Manual adjustments; required a member of the MOD Team, designated as a "checker", to review and authorise each manual adjustment made to the Short Sale Report.

Term	Meaning
Manual adjustments	The process by which MSAL's Middle Office Team made any manual adjustments in the IT Portal to account for any other trading circumstances that: <ul style="list-style-type: none"> (a) occurred during the trading day; and (b) had not been captured in the Short Sale Report through the SYNANG Collection, IT Portal Separation, Agency Adjustments and Reconciliation and Principal Replay Function steps.
Manual Reconciliation Report	One of MSAL's Regulatory Reporting Controls, which involved a manual reconciliation report being run daily at or around 07:30AM being the data recorded in the Market Gateway, Fenargo, CDB, IRESS and FDA systems in relation to the capacity, origin of order and intermediary flag regulatory data fields.
Manual Storm Booking Check	A control implemented by MSAL which manually identifies and removes any duplicate dummy fills included in the Short Sale Report.
Market	As defined in section 767A of the Corporations Act, a facility through which: <ul style="list-style-type: none"> (a) offers to acquire or dispose of financial products are regularly made or accepted; or (b) offers or invitations are regularly made to acquire or dispose of financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in: <ul style="list-style-type: none"> (i) the making of offers to acquire or dispose of financial products; or (ii) the acceptance of such offers.
Market Gateway	MSAL's trading platform that was connected to the ASX and Cboe Australia markets, which populated the required Regulatory Data on its Orders and Trade Reports using static data obtained from a "live" file (being a file that was automatically refreshed every 10 minutes) uploaded to the Market Gateway, which contained data extracted from SYNREF.
Market Operator	Includes ASX Limited and Cboe Australia Pty Ltd
Middle Office Team	MSAL's Middle Office Team during the Relevant Period
MIR	Collectively, the: <ul style="list-style-type: none"> (a) ASX Rules; (b) Chi-X Rules; and (c) Securities Markets Rules from 4 December 2017.
MOD Team	MSAL's Market Operations Division Team
MOD Process Checklist	One of MSAL's controls which: <ul style="list-style-type: none"> (a) was implemented in April 2015; and (b) required the MOD Team physically to select the "completed" option in a web-based task manager form once the Short Sale Report had been submitted to the relevant Market Operator.
MSAL	Macquarie Securities (Australia) Limited ACN 002 832 126
Order	As defined in r 1.4.3 of the Securities Markets Rules
Order Book	As defined in r 1.4.3 of the Securities Markets Rules
Periodic Assurance of Critical Controls	One of MSAL's reviews of its Short Sale Reporting Controls, which: <ul style="list-style-type: none"> (b) was conducted on a biennial basis;

Term	Meaning
	<p>(c) was last conducted in 2020;</p> <p>(d) involved the BORM Team:</p> <ul style="list-style-type: none"> (i) assessing the design and operating effectiveness of controls designated as “Critical Controls” during the Relevant Period, which included the Maker-Check Authorisation of Manual Adjustments, the Daily Short Sell Orders Report and the Four-Eye Check; (ii) conducting a walkthrough with the intention of determining the design effectiveness of the Critical Controls; and (iii) conducting sample testing with the intention of determining the operating effectiveness of the Critical Controls.
Periodic Reviews	MSAL’s reviews relevant to, amongst other things, its Short Sale Reporting Controls or processes conducted during the Relevant Period.
Principal	As defined in r 1.4.3 of the Securities Markets Rules
Principal Short Sales	Covered short sales that MSAL transacted during the Relevant Period on its own behalf.
Principal Replay Function	The replay function deployed by the IT Portal to capture and calculate the transaction information relating to principal trades for accounts designated in SYNANG as Principal accounts.
Program trading order	<p>Where a group of orders (typically more than 5 to 10) are sent together with a common instruction.</p> <p>For example, this might occur where the common instruction is for orders to be traded over the day or at market close, or that all buy trades are to be completed in the morning and the sell trades are to be completed after midday.</p>
Quarterly Review	One of MSAL’s Regulatory Reporting Controls, which involved a quarterly review and attestation by the Head of Cash ANZ Sales Trading Desk on all active accounts in relation to the capacity, origin of order and intermediary flag for each active account.
Quantum	An equity Principal risk system.
Relevant Period	11 December 2009 to 14 February 2024
RCSA	Risk and Control Self-Assessment
Regulatory Data	As defined in r 7.4.4 of the Securities Markets Rules
Regulatory Reporting Controls	The controls implemented by MSAL in relation to the Regulatory Reporting Process, which included the Eagle Eye Check, Splunk Checks, Quarterly Review, Manual Reconciliation Report, Pre-Trade Preventative Controls and Post-trade detective controls.
Regulatory Reporting Process	The process implemented by MSAL during the Securities Market Period in seeking to populate the Regulatory Data required to be submitted to the Market Operator in its Orders and/or Trade Reports pursuant to the AFSL Number Duty.
Resourcing Duty	The requirement on MSAL, during the: <ul style="list-style-type: none"> (a) ASX Market Period in respect of the ASX; and

Term	Meaning
	(b) Cboe Market Period in respect of Cboe Australia, to have and maintain the necessary organisational and technical resources to ensure that MSAL complied at all times with the MIR and the operating rules of all Markets of which it was a participant.
Second RSR	MSAL's notification to ASIC dated 31 January 2023 of a reportable situation in relation to six issues with its Short Sale Reports.
Section 1020B products	Has the meaning given to it in section 1020B of the Corporations Act, being: (a) securities; or (b) managed investment products; or (c) foreign passport funds; or (d) financial products referred to in paragraph 764A(1)(j) of the Corporations Act; or (e) financial products of any other kind prescribed by regulations made for the purposes of the definition of section 1020 products under the Corporations Act.
Securities Markets Period	4 December 2017 to 14 February 2024
Securities Markets Rules	<i>ASIC Market Integrity Rules (Securities Markets) 2017</i>
Short Sale Report	The data compiled by MSAL in relation to its short sales executed on each trading day throughout the Relevant Period.
Short Sale Reporting Controls	The controls implemented by MSAL in relation to the preparation and submission of the Short Sale Report, which included the Trade Volume Check, Maker-Checker Authorisation of Manual Adjustments, Daily Short Sell Orders Report, MOD Process Checklist, Four-Eye Check, End of Day Sign-Off Email and Compliance Monitoring.
Short Sale Reporting Obligations	Requirements on MSAL to report certain details about its covered short sales to the relevant Market Operator during the Relevant Period, including: (a) the number of securities to be vested in the buyer pursuant to the short sale transactions; (b) a description of the security; and (c) the name of the entity that issued the security.
Short Sale Reporting Process	The process implemented by MSAL during the Relevant Period to prepare and submit the Short Sale Report, which involved the steps of SYNANG Collection, IT Portal Separation, Agency Adjustments and Reconciliation, Principal Replay Function Manual adjustments and Final report submission.
Short Sale Reporting Systems	The systems used by MSAL during the Relevant Period to prepare and submit the Short Sale Report, including the IT Portal, SYNANG, i-Broker, Fidessa, STORM, Calypso and Quantum.
Short selling	The practice of a seller selling a financial product (including a security): (a) that the seller does not own; and (b) with the intention of repurchasing the financial product at a later time for a lower price.

Term	Meaning
Splunk Checks	<p>One of MSAL's Regulatory Reporting Controls, which involved the following series of automatic checks and reports generated at the intervals listed below:</p> <ul style="list-style-type: none"> (a) a check run at 30 minute increments to identify changes to a static regulatory data field including in the data uploaded to the Market Gateway (a report was generated whenever a change was identified through the check); (b) a check run at 5 minute increments to identify any potential unauthorised modifications to intermediary and view codes in the data uploaded to the Market Gateway (a report was generated whenever any such potential unauthorised modifications were identified through the check); (c) a check run at 5 minute increments to identify whenever a first trade occurred for a new client account or sub-account (a report was generated whenever any such trades were identified, which was reviewed for the purposes of checking that the Regulatory Data for new clients was correctly reported); (d) a check run at 30 minute increments daily between 10AM and 4PM to identify if a "flipping issue" on the capacity data field in the data uploaded to the Market Gateway had occurred (a report was generated whenever this issue was identified); and (e) an intraday report which identified any changes made to a client's sub-account.
STORM	A front-office order management and hedge generation system for Macquarie Bank Limited synthetic products used from in or around May 2022.
Supervision Duty	<p>The requirement on MSAL, during the:</p> <ul style="list-style-type: none"> (c) ASX Market Period in respect of the ASX; and (d) Cboe Market Period in respect of Cboe Australia, <p>to have appropriate supervisory policies and procedures to ensure compliance by MSAL and each person involved in its business as a market participant with the MIR, the operating rules of each relevant market and the Corporations Act.</p>
SYNANG	MSAL's post trade clearing and settlement system which connected to CHESS to clear and settle trade for Macquarie Bank Limited PID 1576
SYNANG Collection	<p>The process by which, at or around 5:00PM and 8:00PM on each trading day, details of all trades executed by MSAL on that trading day were automatically collected and imported to the IT Portal using:</p> <ul style="list-style-type: none"> (a) prior to around 14 June 2022, data collected from the i-Broker system; and (b) from on or around 14 June 2022, data collected from the SYNANG system.
SYNREF	MSAL's static data system used to record information in relation to trading accounts, including a client's AFSL number and which was implemented on 12 September 2022 following the decommissioning of MSAL's 'CDB' system.

Term	Meaning
Technology Team	MSAL's Technology Team during the Relevant Period
Third RSR	MSAL's notification to ASIC dated 19 May 2023 of a reportable situation in relation to Issue 10.
Trade Report	As defined in r 1.4.3 of the Securities Markets Rules
Trade Volume Check	One of MSAL's controls which: <ul style="list-style-type: none"> (a) was implemented by 14 October 2009; (b) was able to be applied within the IT Portal; (c) compared the total quantity of covered short sales to be reported for each financial product against the total quantity of all sales for that financial product on the relevant day; (d) generated a warning alert if the total covered short sales for a particular financial product exceeded the total quantity of all sales for that financial product, which alert was designed to prompt further investigation by the MOD Team.
Trading Messages	As defined in r 1.4.3 of the Securities Markets Rules
UAT	A SYNANG user acceptance testing environment.
Volume	The number of section 1020B products as defined in section 1020B(1) of the Corporations Act.
Unbooked principal position	A trade which has been executed on a licenced exchange, but not fully entered or agreed on MSAL's downstream trading, risk or booking systems.

SIGNATURE OF LEGAL REPRESENTATIVE

This statement of claim does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record

Date of signature

13 May 2025

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**

Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.

Filing an acknowledgement of the claim.

Applying to the court for further time to pay the claim.

3 If money is claimed, and you believe you owe part of the money claimed, by:

Paying the plaintiff that part of the money that is claimed.

Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street SYDNEY NSW 2000
Postal address	GPO Box 3 SYDNEY NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Nathalie Pietsch
 Address Level 5, 100 Market Street
 SYDNEY NSW 2000
 Occupation Litigation Counsel, Civil Litigation
 Date 13 May 2025

I affirm:

- 1 I am a solicitor employed by the plaintiff and hold the role of Litigation Counsel, Civil Litigation.
 I am authorised to make this affidavit on behalf of the plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

AFFIRMED at

Sydney

Signature of deponent



Name of witness

Mohammed Hassan Malik

Address of witness

Level 5, 100 Market Street, Sydney NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name Australian Securities and Investments Commission
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 100 Market Street
 SYDNEY NSW 2000

Legal representative for plaintiff

Name Edward Martin
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DETAILS ABOUT DEFENDANT**Defendant**

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 Address Level 1
 1 Elizabeth Street
 SYDNEY NSW 2000