AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Section 920A of the *Corporations Act 2001* and Dylan Christopher Rands

Date of decision: 20 September 2021
Name of delegate: s 22

DECISION

Under s920A[1] and s920B the Australian Securities and Investments Commission **(ASIC)** prohibits Mr Rands

- for a period of five years (**five-year period**), from providing any financial services; and
- for a period that commences on a day that is 21 days after the commencement of the five-year period, and concludes on the day that the five-year period concludes, from performing the following specified functions involved in the carrying on of a financial services business (including as an officer, manager, employee, contractor or in some other capacity):

  - managing, supervising, or auditing the provision of a financial service; and
  - the provision of training about a financial service or a financial product.

[1] Unless specified otherwise, a reference to a section is a reference to a section of the *Corporations Act 2001*

TABLE OF CONTENTS

CONTENTS

	Paragraph
A ISSUES	1
A1. ASIC's concerns	1
A2. Broad issues	4
A3. s 45, s 47G (1)(b), s 47E (d)	8
B ENTITIES AND THEIR INTERACTIONS	11
B1. Regal	11
B2. Mr Rands	13
B3. Clearview	17
B4. s 47G (1)(b), s 47E (d)	19
C FIRST ISSUE – DOES A SECTION 920A(1) SCENARIO APPLY?	27
C1. Findings	27
s 45, s 47F, s 47G (1)(b), s 47E (d)	
C4. Reason to believe that Mr Rands is not adequately trained, or not competent	116
s 47F, s 47G (1)(b), s 47E (d)	
C5. Reason to believe that Mr Rands is likely to contravene a financial services law	135
D SECOND ISSUE – SHOULD ASIC MAKE A BANNING ORDER?	137
D1. Power is enlivened	137
D2. Factors to consider in exercising the power to make a banning order	139
D3. Power should be exercised	143
E THIRD ISSUE – WHAT SHOULD BE THE PERIOD OF THE BANNING ORDER?	148
	Schedule
GLOSSARY OF TERMS AND ABBREVIATIONS	1
ACQUISITIONS FROM 11 DECEMBER 2018 to 3 JUNE 2019	2
TRANSACTION ANALYSIS	3

STATEMENT OF REASONS

A. ISSUES

A1. ASIC's concern

1. If one or more of the scenarios described in s920A apply to a person, ASIC may, subject to satisfying prerequisites, make a banning order against the person.

2. Under s920B a banning order is an order specifying that a person is prohibited (for a specified period) from doing one or more of the following:

   (a) Providing any financial services.
   (b) Providing specified financial services in specified circumstances or capacities.
   (c) Controlling, whether alone or in concert with one or more other entities, an entity that carries on a financial services business.
   (d) Performing any function involved in the carrying on of a financial services business (including as an officer, manager, employee, contractor or in some other capacity).
   (e) Performing specified functions involved in the carrying on of a financial services business.

3. ASIC was concerned that one or more of the following scenarios described in s920A might apply to Mr Rands:

   (a) Mr Rands may not have complied with a financial services law (s920A(1)(e)), namely s1041A and s1041B (under s761A each of these provisions is a financial services law).
   (b) ASIC may have reason to believe that Mr Rands is not adequately trained, or is not competent (s920A(1)(da)), to:

      i. provide one or more financial services;
      ii. perform one or more functions as an officer of an entity that carries on a financial services business; or
      iii. control an entity that carries on a financial services business.

   (c) ASIC may have reason to believe that Mr Rands is likely to contravene a financial services law (s920A(1)(f)).

A2. Broad issues

4. Before ASIC can consider making a banning order a procedural prerequisite has to be satisfied. The procedural prerequisite, involving the affording of an opportunity to be heard to Mr Rands, has been satisfied. The affording of an opportunity to be heard involved providing Mr Rands with a document titled '*Attachment A*' that set out details of ASIC concern and a document titled '*Attachment B*' which listed the documents on which the concern was based. s 45, s 47F, s 47G (1)(b), s 47E (d) [redacted].

5. In arriving at this decision, I have considered the documents listed in the '*Attachment B*', s 45, s 47F, s 47G (1)(b), s 47E (d) [redacted]

6. There are three issues arising out of ASIC's concern. Does a s920A(1) scenario apply to Mr Rands? If so, should ASIC make a banning order against Mr Rands? If so, what should be the period and scope of the order?

7. This statement of reasons initially sets out an outline of relevant entities and their interactions, and then addresses these three issues.

s 45, s 47F, s 47G (1)(b), s 47E (d)

10. Schedule 1 to this document contains a glossary of terms and abbreviations that are used in this statement of reasons.

B. ENTITIES AND THEIR INTERACTIONS

B1. Regal

11. Regal Funds Management Pty Ltd ACN 107 576 821 (**Regal**) holds AFS licence number 277737[2]. Regal undertakes investment management and provides investment advisory services. Regal operates registered and unregistered managed investments schemes. Regal's objective for each scheme is to maximise returns, within certain risk limits. s 45, s 47G (1)(b), s 47E (d)

s 45, s 47G (1)(b), s 47E (d)

s 45, s 47F, s 47G (1)(b), s 47E (d)

[redacted]

B3. Clearview

17. Clearview Wealth Limited ACN 106 248 248 (**Clearview**) is a financial services company with businesses that specialise in life insurance, wealth management and financial advice. Since 11 December 2003, Clearview's shares have been listed for trading on the ASX, under the code 'CVW'[18] and were able to be bought and sold on the financial markets known as ASXT, ASXC and Chi-X (**CXAC**).[19]

18. Clearview's Annual Report for 2017[20], dated 24 August 2017, referred to:

    (a) a total of 659,473,127 fully paid ordinary shares being on issue, equating to a market capitalisation of approximately $936 million.[21]

    (b) Clearview's substantial shareholders including:

        i. CCP Bidco Pty Ltd and Associates (**CCP**), who held 252,897,269 CVW or 38.4% of issued capital.

        ii. Perpetual Corporate Trust Limited (**Perpetual**), who held 63,828,308 CVW or 9.7% of issued capital.

        iii. Sony Life Insurance Co., Ltd (**Sony Life**), who held 98,067,795 CVW or 14.9% of issued capital.

    (c) Crescent Capital Partners Management Pty Ltd (**Crescent Capital**) representing the interests of CCP and Perpetual.

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s 45, s 47F, s 47G (1)(b), s 47E (d) [redacted]

[18] Unless otherwise stated, a reference to CVW is a reference to the fully paid ordinary shares of Clearview.

[19] Unless otherwise stated, a reference to 'trading in', 'traded on' or 'traded' is a reference to trading in CVW on ASXT, ASXC and CXAC.

[20] RFM.0003.0009.0132 – FY17 – Part 3 Annual Report - CVW

[21] The market capitalisation of $936m is based on the ASX's closing price of $1.44 on 4 August 2017

s 45, s 47F, s 47G (1)(b), s 47E (d)

[redacted]

Section 1041B

46. Under s1041B(1):

> *A person must not do, or omit to do, an act (whether in this jurisdiction or elsewhere) if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:*
>
> *(a) of active trading in financial products on a financial market operated in this jurisdiction; or*
>
> *(b) with respect to the market for, or the price for trading in, financial products on a financial market operated in this jurisdiction.*

47. Under s1041B(2)

> *For the purpose of subsection* [1041B]*(1), a person is taken to have created a false or misleading appearance of active trading in particular financial products on a financial market if the person:*
>
> *(a) enters into, or carries out, either directly or indirectly, any transaction of acquisition or disposal of any of those financial products that does not involve any change in the beneficial ownership of the products; or*
>
> *(b) makes an offer (the **regulated offer**) to acquire or dispose of those financial products in the following circumstances:*

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s 45 s 47F, s 47G (1)(b), s 47E (d) [redacted]

(i) *the offer is to acquire or dispose of at a specified price; and*

(ii) *the person has made or proposes to make, or knows that an associate of the person has made or proposes to make:*

(A) *if the regulated offer is an offer to acquire – an offer to dispose of; or*

(B) *if the regulated offer is an offer to dispose of – an offer to acquire;*

the same number, or substantially the same number, of those financial products at a price that is substantially the same as the price referred to in subparagraph (i).

s 45, s 47F, s 47G (1)(b), s 47E (d)

[redacted]

s 45, s 47F, s 47G (1)(b), s 47E (d)

Section 1041A

102. Under s1041A:

A person must not take part in, or carry out (whether directly or indirectly and whether in this jurisdiction or elsewhere):

(a) a transaction that has or is likely to have; or
(b) 2 or more transactions that have or are likely to have;

the effect of:

(c) creating an artificial price for trading in financial products on a financial market operated in this jurisdiction; or
(d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market

s 45, s 47F, s 47G (1)(b), s 47E (d)

s 45, s 47F, s 47G (1)(b), s 47E (d)

133. Given the above matters, ASIC has reason to believe that Mr Rands is not adequately trained, or is not competent, to provide one or more financial services or perform one or more functions as an officer of an entity that carries on a financial services business. It follows that ASIC's power to make a banning order against Mr Rands under s920A(1)(da) and under s920A(1)(da) is enlivened.

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s 45, s 47F, s 47G (1)(b), s 47E (d)

s 45, s 47F, s 47G (1)(b), s 47E (d)

135. Accordingly, ASIC has reason to believe that Mr Rands is likely to contravene a financial services law. It follows that ASIC's power to make a banning order against Mr Rands under s920A(1)(f) is enlivened.

D. SECOND ISSUE - SHOULD ASIC MAKE A BANNING ORDER?

D1. Power is enlivened

136. As shown above, ASIC's power to make a banning order against Mr Rands under each of s920A(1)(e), s920A(1)(da)(i), s920A(1)(da)(ii) and s920A(1)(f) is enlivened.

137. As shown below, ASIC will exercise its power to make a banning order against Mr Rands.

D2. Factors to consider in exercising the power to make a banning order

Generally

138. ASIC, in deciding whether to exercise its power under s920A and s920B to make a banning order, has regard to:

(a) ASIC's regulatory guide number 98 titled '*ASIC's powers to suspend, cancel and vary AFS licences and make banning orders*'.
(b) ASIC's role as set out in s1(1) of the *Australian Securities and Investments Commission Act 2001*.
(c) The objects of chapter 7 of the *Corporations Act 2001* as set out in s760A.

Regulatory Guide number 98

139. ASIC's regulatory guide number 98 states at the commencement of section C *'The factors we will take into account when deciding whether to make a banning order will depend on the circumstances of each matter. The factors we will consider when making these decisions may include whether ... action is desirable to protect investors and consumers; action is likely to promote confident and informed decision making by investors and consumers; action may deter industry participants from engaging in misconduct; or action is likely to promote fairness, honesty and professionalism by industry participants'*.

ASIC's role as set out in section 1(1) of the ASIC Act

140. Section 1(2) of the *Australian Securities and Investments Commission Act 2001* states:

'In performing its functions and exercising its powers, ASIC must strive to:

(a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing

business costs, and the efficiency and development of the economy; and

(b) promote the confident and informed participation of investors and consumers in the financial system; and ...'.

<u>The objects of chapter 7 as set out in section 760A</u>

141. Sections 760A and s920A are in chapter 7 of the *Corporations Act 2001*. Section 760A states:

'The main object of this Chapter is to promote:

(a) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and

(b) fairness, honesty and professionalism by those who provide financial services; and

(c) fair, orderly and transparent markets for financial products; and

(d) the reduction of systemic risk and the provision of fair and effective services by clearing and settlement facilities'.

s 45, s 47F, s 47G (1)(b), s 47E (d)

[redacted]

s 45, s 47F, s 47G (1)(b), s 47E (d)

146. Accordingly, it is appropriate that, under s920A and s920B, a banning order be made against Mr Rands that prohibits Mr Rands:

(a) From providing any financial services.
(b) From performing the following specified functions involved in the carrying on of a financial services business (including as an officer, manager, employee, contractor or in some other capacity) subject to a 21 day grace period in which he can, in an orderly manner, exit any existing roles:

i. managing, supervising, or auditing the provision of a financial service; and
ii. the provision of training about a financial service or a financial product.

E. THIRD ISSUE - WHAT SHOULD BE THE PERIOD OF THE BANNING ORDER?

147. As shown below, the period of the banning order should be 5 years.

s 45, s 47F, s 47G (1)(b), s 47E (d)

s 45, s 47F, s 47G (1)(b), s 47E (d)

FOI 022-2022

s 45, s 47F, s 47G (1)(b), s 47E (d)

159. Overall, I feel that a banning period of five years will achieve the Desired Regulatory Outcomes and, in all the circumstances, would be appropriate.

160. Accordingly, I will, under s920A and s920B, make a banning order of the type described above that applies for five years.

SCHEDULE 1 – GLOSSARY OF TERMS AND ABBREVIATIONS

Ask	Order to sell a particular security.
ASX	Limited is a market licensee under the *Corporations Act 2001* and the operator of a financial market, the Australian Securities Exchange. It is sometimes referred to as the Stock Exchange or Stock Market and it provides a marketplace for the trading of financial products, clearing house and payments system facilitator.
ASXC	An abbreviation for '*ASX Centrepoint*'. Refers to the Matching System facilitated by the ASX for participants to anonymously enter transactions in respect of shares and other financial products.
ASXT	An abbreviation for '*ASX TradeMatch*'. Refers to the Trading Platform facilitated by the ASX to enter into transactions in respect of shares and other financial products.
ASX Code	Unique code used to identify companies listed for trading on the ASX.
Bid	Order to buy a particular security.
Bid/Ask/Spread	The value of the best (highest) Bid, the best (lowest) Ask.
Block Trade	As defined in Rule 6.2.1 of the *ASIC Market Integrity Rules (Securities Markets 2017)*.
s 45, s 47G (1)	[redacted]
Broker	Trader or trading company given responsibility for the acceptance and/or execution of an order. Also known as a Trading Participant.
Broker Code	Individual broker identification number allocated by the ASX to Trading Participants.
s 45, s 47G (1)(b), s 47E (d)	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Creeping Provisions

Include s606(1) and s611.

s 45, s 47G (1)(b), s 47E (d) [redacted]

Crossing As defined in ASIC Market Integrity Rules (Securities Markets) 2017, that 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'.

CSPA Closing Single Price Auction - See Trading phases of ASX, below.

CXAC Refers to the trading platform facilitated by Chi-X to enter into transactions in respect of shares and other financial products.

s 45, s 47G (1)(b), s 47E ([redacted]

DTR Designated Trading Representative approved by the ASX to act as the Trading Participant's operator.

s 45, s 47G (1)(b), s 47 [redacted]

[redacted]

Illiquidity A term used to measure the difficulty for which a stock can be sold by reference to its respective market.

Issued shares Shares of a company allotted to shareholders.

Liquidity A term used to measure the ease for which a stock can be sold by reference to its respective market.

s 45, s 47G (1)(b), s 47E (d) [redacted].

Market Depth The existing bids and asks of a security at a particular point in time.

s 45, s 47G (1)(b), s 47E (d) [redacted]

TradeMatch Computerised trading system used by ASX to trade shares, among other things. Also known as '*ASXT*' or '*ASX TradeMatch*'.

s 45, s 47F, s 47G (1) [redacted].

OSPA Open Single Price Auction - See Trading phases of ASX.

Pre-Trade Filter A mechanism employed in trade execution software to prevent the entry of certain Bids or Asks. The purpose of the mechanism is usually to mitigate or prevent market misconduct.

Put Through As defined in the ASX Operating Rules Procedures, that is '*a Crossing that results in the Cash Market Products the subject of the transaction being sold by a nominee that holds those Cash Market Products on behalf of a Funds Manager to another nominee that holds those Cash Market Products on behalf of the same Funds Manager*'.

Quotation Securities in a listed entity are quoted on ASX for trading and defined in the ASX Listing Rules as Official Quotation.

s 45, s 47G (1)(b), s 47E (d) [redacted]

Regulated Offer Has the same meaning as '*Regulated Offer*' in s1041B.

s 45, s 47G (1)([redacted].

Special Crossing As defined in ASIC Market Integrity Rules (Securities Markets) 2017, that is:

(a) in relation to an Equity Market Product able to be traded on more than one Market, means a Block Trade of a Large Portfolio Trade, entered into other than by matching or Orders on an Order Book of a Market;

(b) in relation to a Product other than an Equity Market Product able to be traded on more than one Market, has the meaning given by the operating rules of the Market where the transaction occurs; and

(c) includes a transaction referred to as a negotiated transaction in the operation rules of a market where:

(i) a Market Participant acts on behalf of a selling client to that transaction or as Principal to that transaction;

(ii) another Market Participant acts on behalf of a buying client to that transaction or as Principal to that transaction; and

(iii) the transaction is effected other than by the matching of Orders entered into the Trading Platform of the relevant Market.'

Spread The difference between the highest bid and the lowest ask of a particular security.

s 45, s 47F, s 47G [redacted]

Trade A trade occurs when the price of a Bid and an Ask (also known as an offer) for a security overlap on ASXT, ASXC or CXAC: that is, when the price of a Bid and an Ask are the same; or the price of a Bid is greater than the price of an Ask

Trading phases of ASX

Pre-Open – between 7am and approximately 10am (or until the security commences trading), the market is in '*Pre-Open*'. No trades can occur, however orders can be entered, amended or cancelled.

OSPA – from 10am, the Open Single Price Auction, in which securities open for trading on ASX in five groups, in alphabetical order.

Pre-CSPA – between 4pm and approximately 4.10pm, the market is in '*Pre-CSPA*'. No trades can occur, however orders can be entered, amended or cancelled.

CSPA – between 4:10pm and 4:12pm, the Closing Single Price Auction, at just after the close of the market each trading day.

s 45, s 47G [redacted].

VWAP Volume weighted average price (for a given period).