

**IN THE SUPREME COURT OF NEW SOUTH WALES
2025**

No. 2025/00184008

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

This document was eFiled
on 14 May 2025 . Final
acceptance has been
given.

ORIGINATING PROCESS

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



A. DETAILS OF APPLICATION

This is an application for:

- (a) declaratory relief pursuant to section 1317E of the *Corporations Act 2001* (Cth) (**Corporations Act**), section 12GBA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), section 75 of the *Supreme Court Act 1970* (NSW) (**Supreme Court Act**) and/or the Court's inherent jurisdiction;
- (b) orders for pecuniary penalties pursuant to section 1317G of the *Corporations Act* and section 12GBB of the *ASIC Act*;
- (c) orders for a compliance program and independent expert report pursuant to section 1101B(1) of the *Corporations Act*, further or alternatively pursuant to section 12GLA(2)(b) of the *ASIC Act*;
- (d) costs; and
- (e) such further or other orders or relief as the Court sees fit,

in respect of alleged contraventions of sections 798H(1)(b), 912A(1)(h) and 1308(5) of the Corporations Act and section 12DF(1) of the ASIC Act.

The following definitions are used in this Originating Process:

- (a) **Contravention Period** means the period from 14 May 2019 to 14 February 2024;
- (b) **Market Operator** means:
 - (i) ASX Limited, in respect of the licensed financial market known as the ASX ; and
 - (ii) Cboe Australia Pty Limited (formerly known as Chi-X Limited), in respect of the licensed financial market known as Cboe Australia;
- (c) **Order** has the meaning given to that term in rule 1.4.3 of the Securities Markets Rules;
- (d) **Order Book** has the meaning given to that term in rule 1.4.3 of the Securities Markets Rules;
- (e) **Regulatory Data** has the meaning given to that term in rule 7.4.4 of the Securities Markets Rules;
- (f) **Securities Markets Rules** means the *ASIC Market Integrity Rules (Securities Markets)* 2017 made under subsection 798G(1) of the Corporations Act;
- (g) **Short Sale Report** means the information required to be given to the relevant Market Operator, in relation to sales of listed section 1020 products (within the meaning of section 1020B(1) of the Corporations Act) on licensed markets, pursuant to sections 1020AB(3) and 1020AC(2) of the Corporations Act and regulations 7.9.100 and 7.9.101 of the *Corporations Regulations 2001* (Cth);

On the facts stated in the accompanying concise statement (**Concise Statement**) and statement of claim (**SOC**), the plaintiff (**ASIC**) claims:

Declarations

1. A declaration pursuant to section 1317E of the Corporations Act, section 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, in the Contravention Period, by failing to take all, or alternatively such combination as may be declared by the Court, of the steps alleged at paragraphs 73(a) to 73(j) of the SOC,

including by reason of the deficiencies alleged at paragraphs 74(a) to 74(j) of the SOC, the defendant (**MSAL**):

- (a) breached rule 2.1.3 of the Securities Markets Rules; and
 - (b) thereby contravened section 798H(1)(b) of the Corporations Act.
2. A declaration pursuant to section 1317E of the Corporations Act, section 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, in the Contravention Period, by failing to take all, or alternatively such combination as may be declared by the Court, of the steps alleged at paragraphs 73(a) to 73(j) of the SOC, including by reason of the deficiencies alleged at paragraphs 74(a) to 74(j) and 80(b) to 80(c) of the SOC, MSAL:
 - (a) breached rule 5.5.2(b) of the Securities Markets Rules; and
 - (b) thereby contravened section 798H(1)(b) of the Corporations Act.
3. A declaration pursuant to section 1317E of the Corporations Act, section 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, in the period from 16 November 2022 to 21 March 2023, by failing to include required Regulatory Data in each of the 633,680 Orders transmitted to an Order Book of the relevant Market Operator as alleged at paragraphs 49 to 54 of the SOC, MSAL:
 - (a) breached rule 7.4.2 of the Securities Markets Rules;
 - (b) thereby contravened section 798H(1)(b) of the Corporations Act on each of the 633,680 occasions on which the Orders were transmitted to an Order Book of the relevant Market Operator; and
 - (c) in the alternative to prayer 3(b), thereby contravened section 798H(1)(b) in respect of the 633,680 Orders transmitted to an Order Book of the relevant Market Operator.
4. A declaration pursuant to section 1317E of the Corporations Act, section 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, in the Contravention Period, by failing to take all, or alternatively such combination as may be declared by the Court, of the steps alleged at paragraphs 73(a) to 73(j) of the SOC, including by reason of the deficiencies alleged at paragraphs 74(a) to 74(j) of the SOC, MSAL contravened section 912A(1)(h) of the Corporations Act.

5. A declaration pursuant to section 1317E of the Corporations Act, section 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, in the Contravention Period, by:
- (a) providing to the relevant Market Operator approximately 918 Short Sale Reports that were materially false or misleading as alleged at paragraph 95 of the SOC;
 - (b) making the relevant statements or omitting the relevant matter or thing, or otherwise authorising such statement or omission, for the approximately 918 Short Sale Reports as alleged at paragraph 94 of the SOC; and/or
 - (c) failing to take all, or alternatively such combination as may be declared by the Court, of the steps alleged at paragraphs 73(a) to 73(j) of the SOC, including by reason of the deficiencies alleged at paragraphs 74(a) to 74(j) of the SOC,
- MSAL thereby contravened section 1308(5) of the Corporations Act:
- (d) on each of the 918 occasions on which the relevant Short Sale Reports were submitted during the Contravention Period; and
 - (e) in the alternative to prayer 5(d), collectively in respect of approximately 918 Short Sale Reports submitted during the Contravention Period.
6. A declaration pursuant to section 12GBA of the ASIC Act, section 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, during the Contravention Period, by reason of making the inaccurate representations in the 918 Short Sale Reports submitted to the relevant Market Operator as alleged at paragraph 103 to 104 of the SOC, MSAL:
- (a) engaged in conduct, in trade or commerce, that was liable to mislead the public as to the quantity of financial services;
 - (b) thereby contravened section 12DF(1) of the ASIC Act on each of the 918 occasions on which the Short Sale Reports were submitted during the Contravention Period; and
 - (c) in the alternative to prayer 7(b), thereby contravened section 12DF(1) of the ASIC Act collectively in respect of the 918 Short Sale Reports submitted during the Contravention Period.

Compliance program

7. An order pursuant to section 1101B(1) of the Corporations Act, further or alternatively pursuant to section 12GLA(2)(b) of the ASIC Act, directing that MSAL, at its cost, undertake the following steps within such period as the Court sees fit:
- (a) MSAL will implement changes to its systems, controls, policies and procedures for the purposes of preventing, detecting and responding to future breaches by MSAL of the kind identified in prayers 1 to 6 above;
 - (b) After finalising the work identified in prayer 7(a) above, MSAL will instruct an independent expert (whose identity and terms of engagement are to be approved by ASIC) to:
 - (i) independently assess the adequacy and effectiveness of MSAL's systems, controls, policies and procedures for the purposes of preventing detecting and responding to future breaches by MSAL of the kind identified in prayers 1 to 6 above; and
 - (ii) provide a report to ASIC and MSAL which will identify any deficiencies and make recommendations to address any such deficiencies (**Expert Report**)
 - (c) In relation to any deficiencies identified in the Expert Report, MSAL will implement all reasonable recommendations of the independent expert within an appropriate period of time after receiving the Expert Report and provide a statement to ASIC, signed by an appropriate executive of MSAL;
 - (i) confirming that those recommendations have been implemented; and
 - (ii) explaining why any recommendation has not been implemented (if any); and
 - (d) to the extent that there is any delay in respect of the period of time within which the steps set out in prayers 7(a) to (c) are to be completed:
 - (i) MSAL is to promptly notify ASIC of the delay;
 - (ii) following such notification, the parties are to confer for the purposes of agreeing any reasonable extension of the time for completing the relevant step; and

- (iii) failing such agreement, or upon failing to complete any step in accordance with any extended period agreed for the purposes of prayer 7(d)(ii), ASIC has liberty to apply to the Court to seek orders fixing the time within which the relevant step is to be completed.

Pecuniary Penalties

- 8. An order pursuant to section 1317G of the Corporations Act, that MSAL pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of MSAL's contraventions of sections 798H(1), 912A(1)(h) and/or 1308(5) of the Corporations Act referred to in prayers 1 to 5 above.
- 9. An order pursuant to section 12GBB of the ASIC Act, that MSAL pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of MSAL's contraventions of section 12DF(1) of the ASIC Act referred to in prayer 6 above.

Other orders

- 10. An order that MSAL pay ASIC's costs of the proceedings.
- 11. Such further or other orders or relief as the Court sees fit.

Dated: 13 May 2025



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Edward Martin
Solicitor for the Plaintiff

This application will be heard by the Supreme Court of New South Wales at Queens Square, Sydney atam/pm on

B. NOTICE TO DEFENDANT

TO: Macquarie Securities (Australia) Limited ACN 002 832 126 of Level 1, 1 Elizabeth Street, Sydney NSW 2000.

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

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

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

C. FILING

Date of filing: 13 May 2025

This originating process is filed by Edward Martin for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

Edward Martin
Gadens
Level 29, 8 Chifley Square, Sydney NSW 2000

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

Macquarie Securities (Australia) Limited ACN 002 832 126
Level 1
1 Elizabeth Street
SYDNEY NSW 2000