



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

No. MDP02/12, Monday, 28 May 2012

Published by ASIC

# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

**Recipient:** Commonwealth Securities Limited

The recipient has complied with the infringement notice. Compliance is not an admission of guilt or liability; and the recipient is not taken to have contravened subsection 798H (1) of the Corporations Act 2001.

#### RIGHTS OF REVIEW

Recipients affected by the decision of the Markets Disciplinary Panel to give them an infringement notice under subsection 798H(1) of the *Corporations Act 2001* and Part 7.2A of the *Corporations Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn. ASIC has published RG 216 to assist recipients to determine whether they have such rights – see RG 216.71 and RG 216.77 to 216.79. Copies of this document can be obtained from the ASIC website at [www.asic.gov.au](http://www.asic.gov.au)

ISSN 1445-6060 (Online version)  
ISSN 1445-6079 (CD-ROM version)

Available from [www.asic.gov.au](http://www.asic.gov.au)  
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## PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To:

**Commonwealth Securities Limited**  
**ACN 067 254 399**  
**G Tower 1**  
**201 Sussex Street**  
**SYDNEY NSW 2000**

**TAKE NOTICE:** The Australian Securities and Investments Commission (**ASIC**) gives this infringement notice to Commonwealth Securities Limited (**CommSec**) under regulation 7.2A.04 of the *Corporations Regulations 2001* (the **Regulations**). To comply with this notice CommSec must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$35,000**.

This infringement notice is given on 24 April 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is **2495/12**.

### **Alleged contravention and penalties, sanctions etc**

Commsec was an ASX Trading Participant at the relevant time and was therefore an entity required by subsection 798H (1) of the *Corporations Act 2001* (the **Act**) to comply with the market integrity rules at that time.

Commsec is alleged to have contravened subsection 798H(1) of the Act by reason of contravening a market integrity rule 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 (**MIR 5.9.1**), which provides:

*“A Market Participant must not do anything which results in a market for a product not being both fair and orderly, or fail to do anything where that failure has that effect.”*

**On the evidence before it, the Markets Disciplinary Panel was satisfied that:**

- (1) At 10:23:49 on 10 August 2011, CommSec entered a Priority Crossing for 200,000 shares in OZ Minerals Limited ACN 005 482 824, having ASX Code "OZL" at \$1.545 on the Trading Platform operated by the ASX ("the Order").
- (2) The Order was erroneous in that CommSec intended to enter a Priority Crossing for 200,000 fully paid ordinary shares of Duet Group, having ASX Code "DUE", at \$1.545.
- (3) The Order on the Trading Platform consisted of:
  - (a) a Bid to buy one fully paid, ordinary share in OZL at \$1.545 ("the Bid"); and
  - (b) an Ask to sell 200,000 fully paid ordinary shares in OZL at \$1.545 ("the Ask").
- (4) The CommSec Designated Trading Representative (DTR) received alerts in CommSec's order management system immediately prior to the entry of the Order on the Trading Platform. Despite receiving these alerts, the DTR entered the Order on the Trading Platform.
- (5) The Order immediately transacted on the Trading Platform as follows:
  - (a) The Ask transacted with the 169,991 OZL in the Market at prices between \$11.88 and \$5.40 and resulted in 152 Cash Market Transactions;
  - (b) A crossing market was then established at \$1.545 and the Bid then crossed with the Ask on the market with the residual 30,009 OZL at \$1.545.
- (6) The Order resulted in the traded price of OZL to fall \$10.33 from \$11.88 to \$1.545 or 87%. The Order resulted in 153 Market Transactions and involved 15 Trading Participants as counterparties on the buy side. Trade cancellations were made.

By reason of its entry of the Order on 10 August 2011, the Markets Disciplinary Panel has reasonable grounds to believe that CommSec has contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the Act.

**Maximum pecuniary penalty that a Court could order**

The maximum pecuniary penalty that a Court could order CommSec to pay for contravening the market integrity rule CommSec is alleged to have contravened is \$1,000,000.

### Penalty, under the Infringement Notice

The penalty payable under this infringement notice for the alleged contravention of subsection 798H(1) of the Act and therefore the total penalty that CommSec must pay to the Commonwealth is \$35,000.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

In determining the appropriate penalty in this matter ASIC's Markets Disciplinary Panel took into account all relevant guidance in ASIC Regulatory Guide 216 and noted in particular the following :

- MIR 5.9.1 is aimed at ensuring a fair, open and transparent trading system, with a strict obligation imposed on Market Participants not to do anything which results in a market for a product not being both fair and orderly. The misconduct had the potential to damage the reputation and integrity of the Market;
- CommSec had an alert procedure in place;
- Although the DTR involved in this matter was an experienced DTR with no history of previous errors, he failed in this case to perform this function to the requisite high standard;
- CommSec co-operated with ASIC throughout its investigation and did not dispute any material facts;
- CommSec agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- This was an isolated incident;
- CommSec has no recorded history of non-compliance with the Market Integrity Rules and has two recorded ASX Disciplinary Tribunal determinations of the prior ASX Market Rules.
- An important aspect of the role of the DTR is to review and prevent the entry of orders into the trading platform that could result in a market that is not fair or orderly, including having proper regard to any internal alerts generated. This is a critical measure in maintaining the integrity of the market.

### Compliance with the Infringement Notice

CommSec may choose not to comply with this infringement notice, but if CommSec does not comply, civil proceedings may be brought against CommSec in relation to the alleged contravention.

To comply with this infringement notice, CommSec must pay the Penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to CommSec; and
- (b) ends 27 days after the day on which the infringement notice is given to CommSec;
- (c) unless an application is made for its extension.

CommSec may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If CommSec does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If CommSec applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- (a) 28 days after the day on which the infringement notice was given to the recipient; and
- (b) 7 days after the notice of refusal is given to the recipient.

CommSec may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If CommSec does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to CommSec.

### Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of CommSec to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged; and
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against CommSec for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act; and
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against CommSec for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act; and
- (d) CommSec is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) CommSec is not taken to have contravened subsection 798H(1) of the Act.

**Publication**

ASIC may publish details of this infringement notice under regulation 7.2A.15 of the Regulations.

**Susan Humphreys**

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities and Investments Commission

Dated: 24 April 2012

Note : Members of ASIC's Market Disciplinary Panel constitute a Division of ASIC as delegates of the members of the Division for the purposes of considering the allegation covered by this notice.