



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

No. MDP03/13, Friday, 12 July 2013

Published by ASIC

ASIC Gazette

Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Credit Suisse Equities (Australia) 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

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

Available from www.asic.gov.au
Email gazette.publisher@asic.gov.au

© Commonwealth of Australia, 2013

This work is copyright. Apart from any use permitted under the *Copyright Act 1968*, all rights are reserved. Requests for authorisation to reproduce, publish or communicate this work should be made to: Gazette Publisher, Australian Securities and Investment Commission, GPO Box 9827, Melbourne Vic 3001



PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To:

Credit Suisse Equities (Australia) Limited
Level 31, Gateway
One Macquarie Place
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Credit Suisse Equities (Australia) Limited ACN 068 232 708 ("Credit Suisse") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Credit Suisse must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
\$95,000.

This infringement notice is given on 14 June 2013.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP26698/12.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 have the same meaning when used in this notice, including those set out in the Appendix to this notice.

Alleged contravention and penalty

Credit Suisse was a Trading Participant in the Market operated by ASX Limited and was therefore an entity required by subsection 798H(1) of the *Corporations Act 2001* ("Act") to comply with the market integrity rules at that time.

Credit Suisse is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 5.6.3 and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.3 and MIR 5.9.1").

MIR 5.6.3 relevantly provides:

"A Trading Participant which uses its system for Automated Order Processing must ensure that the system has in place:

- (a) *organisational and technical resources, including having appropriate automated filters, filter parameters and processes to record any changes to the filters or filter parameters, to enable Trading Messages to be submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform;"*

.....

MIR 5.9.1 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 ("MDP") was satisfied that:

- 1) On 7 November 2011, at approximately 10:00am, a client of Credit Suisse ("Client") entered an Order to sell 2,948,931 ordinary shares in Hastie Group Limited ("Hastie") – having at the time ASX code ("HSTDA") – at a limit price of \$0.315, via Credit Suisse's AOP system ("Relevant Order").
- 2) The Client did not take into account that as of 7 November 2011, Hastie would be trading on a deferred settlement basis due to a 10 to 1 share consolidation ("Reconstruction"), despite the ASX code being temporarily changed from HST to HSTDA to reflect the Reconstruction.
- 3) On 7 November 2011, at approximately 10:04am on behalf of the Client, Credit Suisse via its AOP system submitted into the ASX Trading Platform part of the Relevant Order being an Order to sell 1,616 HSTDA – creating a transaction value of approximately \$824 on execution.
- 4) The subsequent part trading of the Relevant Order at a price of \$0.51 ("Relevant Price") created a \$0.47 or 48% decrease from the Reconstruction adjusted last traded price of \$0.98. The Relevant Price set the official open and low of the Trading Day.
- 5) The Relevant Order did not generate any price based AOP alerts, despite the deviation from the Reconstruction adjusted last traded price, due to the following:
 - (a) Credit Suisse's maintenance work on its AOP system on the weekend of 5 November 2011, incorrectly included a mapping table that converted market data information for HSTDA to HST;
 - (b) when Credit Suisse's automated filters were unable to conduct price limit checks because there was no reference price for HSTDA, they issued a technical error; and
 - (c) despite the technical error, Credit Suisse's AOP system incorrectly submitted part of the Relevant Order to the ASX Trading Platform due to not having appropriate automated filters.

- 6) Credit Suisse became aware of the executed part of the Relevant Order when contacted by ASIC on 7 November 2011, at approximately 11:30am. Around 90 minutes after contact from ASIC, at approximately 1:00pm, Credit Suisse contacted ASX Market Control to request cancellation of the executed part of the Relevant Order, however cancellation was denied due to the length of time between execution and request for cancellation not being in compliance with Procedure 3210 of the ASX Operating Rules Procedures.

By reason of Credit Suisse's part entry of the Relevant Order into the ASX Trading Platform on 7 November 2011, the MDP has reasonable grounds to believe that Credit Suisse contravened MIR 5.6.3 and 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 Credit Suisse to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 5.6.3, is \$1,000,000; and
- by reason of contravening MIR 5.9.1, is \$1,000,000.

The maximum pecuniary penalty that may be payable by Credit Suisse under an infringement notice given under subsection 798K(2) of the Act:

- by reason of contravening MIR 5.6.3, is \$600,000; and
- by reason of contravening MIR 5.9.1, is \$600,000.

Penalty under the Infringement Notice

The penalties payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act are as follows:

- MIR 5.6.3 – \$65,000; and
- MIR 5.9.1 – \$30,000.

Therefore, the total penalty that Credit Suisse must pay to the Commonwealth is **\$95,000**.

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 this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance, including ASIC Regulatory Guide 216 – *Markets Disciplinary Panel*, and noted in particular the following:

- MIR 5.6.3 is aimed at ensuring confidence in the integrity of the Market. Appropriate filters, filter parameters and processes, and controls around changes to filters, are critical elements in maintaining the integrity of the Market;

- A Trading Participant which uses AOP systems must ensure that it has in place adequate organisational and technical resources to account for corporate actions including share consolidations or reconstructions. Credit Suisse failed to ensure that its organisational and technical resources were such that its AOP system could account for the Reconstruction;
- 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;
- In this matter, the misconduct had the potential to damage the reputation and integrity of the market, particularly as the part entry of the Relevant Order into the ASX Trading Platform resulted in a price decrease from the expected Reconstruction adjusted last traded price of \$0.98 to \$0.51— being a 48% decrease. Moreover, the part execution of the Relevant Order set both the official open and low prices on 7 November 2011. The impact of the resulting trade had the potential to damage public confidence in the market;
- The breaches were negligent on the part of Credit Suisse. Whilst it is accepted that the Relevant Order was entered by the Client at an erroneous price, the Relevant Order was placed via Credit Suisse's AOP system which failed to have appropriate filters and resources to prevent part of the Relevant Order being submitted to the ASX Trading Platform and subsequently trading;
- The serious nature of the breaches;
- Credit Suisse did not self-report the breaches to ASIC and failed to inform both ASIC and the ASX in a timely manner. The latter failure resulted in the part executed Relevant Order not being cancelled;
- Credit Suisse did not derive any actual or potential benefit from the breaches;
- One course of conduct resulted in the breaches;
- There were two breaches of the market integrity rules, being one breach of MIR 5.6.3 and one breach of MIR 5.9.1;
- Credit Suisse co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Credit Suisse took action to prevent any recurrence of the breach, firstly on 7 November 2011, by initiating a temporary measure to alert Credit Suisse of Orders sent to Market in the instance when there is no reference price for limit checks. Further, on 15 June 2012, Credit Suisse implemented permanent measures by updating its technical resources to reject all Orders where there is no reference price;
- Credit Suisse has previously been sanctioned by the ASX Disciplinary Tribunal on six occasions since 2003. Two of these previous matters involved AOP contraventions. Credit Suisse has one prior contravention found against it by the MDP in Infringement Notice – MDP 31266/11 dated 29 August 2012, relating to Rule 5.6.1 of the ASIC Market Integrity Rules (ASX Market) 2010. The MDP notes that any future, repeat contraventions in similar or comparable matters will not be viewed favourably; and
- Credit Suisse agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

To comply with this infringement notice, Credit Suisse must pay the penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to Credit Suisse; and
- (b) ends 27 days after the day on which the infringement notice is given to Credit Suisse;

unless an application is made for its extension.

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

If Credit Suisse 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.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Credit Suisse 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 Credit Suisse 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 Credit Suisse 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) Credit Suisse is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Credit Suisse 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 & Investments Commission

Dated : 14 June 2013

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

Appendix – Defined Terms

"ASX" means ASX Limited (ACN 008 624 691).

"Automated Order Processing" ("AOP") means the process by which orders are registered in a Trading Participant's system, and, if accepted for submission into a Trading Platform by the Trading Participant submitted as a corresponding Trading Message without being keyed or rekeyed by a Designated Trading Representative ("DTR").

"DTR" means a Representative of the Trading Participant who has been authorised by the Trading Participant to submit Trading Messages to the Trading Platform on behalf of the Trading Participant.

"Market" means the market operated by the Market Operator under Australian Market Licence (Australian Stock Exchange Limited) 2002.

"Market Participant" means a Participant in the Market admitted under the Market Operating Rules.

"Order" relevantly means:

- (a) in relation to Cash Market Products, an instruction to purchase or sell Cash Market Products, or an instruction to amend or cancel a prior instruction to purchase or sell Cash Market Products; and
-

"Trading Messages" means those messages submitted into a Trading Platform relating to trading functions, such as Orders, amendment or cancellation of Orders and the reporting or cancellation of Market Transactions on the Trading Platform.

"Trading Participant" means a Market Participant which has Trading Permission in respect of one or more products.

"Trading Permission" means the right to submit Trading Messages in a trading Platform.

"Trading Platform" means a facility made available by the Market Operator to Trading Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions.