Commonwealth of Australia Gazette
No. MDP04/13, Thursday, 18 July 2013 Published by ASIC

ASIC Gazette

Contents

Markets Disciplinary Panel Infringement Notice

Recipient: UBS Securities 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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**

PART 7.2A OF THE CORPORATIONS REGULATIONS 2001
INFRINGEMENT NOTICE

To: UBS Securities Australia Limited
Level 16, Chifley Tower
2 Chifley Square
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to UBS Securities Australia Limited, ACN 008 586 481 ("UBS") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice UBS must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **$30,000.**

This infringement notice is given on 17 June 2013.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP28148/12.

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

UBS was a Market Participant in the Market operated by ASX at the relevant time 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.

UBS is alleged to have contravened subsection 798H(1) of the Act by reason of contravening 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 ("MDP") was satisfied that:

1) At 9:38:02 on 16 December 2011, UBS submitted into the ASX Trading Platform an Order for a client being an Ask (Offer) to sell 1,800 units in Betashares Gold Bullion ETF (A$ Hedged), having ASX code ("QAU"), at a price of $0.165 ("Relevant Order").

2) Immediately prior to entry of the Relevant Order:

   (a) the last traded price of QAU, was $15.75, being the last traded price on close of trading on the previous Trading Day; and

   (b) no other Orders for QAU were in the Trading Platform.

3) Between 7:00:00 and 10:00:00, the Trading Platform was in Pre–Open Session State whereby Bids and Offers may be entered, amended or cancelled in the Trading Platform and no Bids or Offers will be matched.

4) On commencement of trading at about 10:00:00, the Relevant Order transacted on the Trading Platform in its entirety between about 10:00:00 and 10:00:42 in two Market Transactions at a price of $0.165 with a total value of $297 and involved one Market Participant as counterparty.

5) The Relevant Order resulted in the price of QAU to decrease by $15.585 from the last traded price of $15.75 at close of trading on the previous Trading Day to a price of $0.165, being a 99% decrease in the price of QAU.

6) The Relevant Order was submitted into the Trading Platform by UBS' AOP system despite:

   (a) triggering a UBS AOP filter; and

   (b) being auto routed to a DTR for authorisation;

      (i) the DTR authorised the Relevant Order despite the receipt of two warning messages and despite the last traded price of QAU being $15.75 because the DTR misapplied a decimal point in the Relevant Order versus the last traded price, in the belief that it was at an appropriate price; and

      (ii) the Relevant Order was then submitted into the Trading Platform by UBS notwithstanding that the reference price for QAU was the previous Trading Day's closing price of $15.75.

7) UBS requested that ASX cancel the two Market Transactions and the ASX subsequently directed the cancellation of the two Market Transactions that impacted one counterparty Market Participant.

By reason of UBS' entry of the Relevant Order into the ASX Trading Platform on 16 December 2011, the MDP has reasonable grounds to believe that UBS 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 UBS to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 5.9.1, is $1,000,000.

The maximum penalty that may be payable by UBS under an infringement notice given under subsection 798K(2) of the Act, is $600,000.

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 UBS must pay to the Commonwealth is **$30,000**.

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 5.9.1 is aimed at ensuring a fair, open and transparent trading system, with a strict obligation imposed on Market Participants which requires that Participants do not do anything which results in a market for a product not being both fair and orderly;

- UBS had in place filter parameters that automatically routed the client Order for authorisation by a supervisor, a UBS DTR;

- The conduct appears to have been inadvertent on the part of the UBS DTR, rather than deliberate or reckless. 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;

- 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 both fair and orderly, including having proper regard to any internal alerts generated. This is a critical measure in maintaining the integrity of a market;

- UBS undertook the following remedial measures to prevent recurrence:

    - conducted training of its DTRs;

    - updated its client Order configuration for client Orders into this particular AOP system to avoid human error in that it has implemented:

        - an Order system that has an auto deny or reject functionality if a particular client Order breaches a pre–defined price parameter in the first UBS system before the data connects to the AOP system; and

  - an auto deny functionality for Orders that breach pre–defined price parameters prior to entry into the ASX Warrants platform within the AOP system;

- UBS co–operated with ASIC throughout its investigation and did not dispute any material facts;

- UBS agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;

- This was an isolated incident;

- UBS has no recorded history of non–compliance with the market integrity rules and has had two recorded ASX Disciplinary Tribunal determinations of ASX Market Rules since 2004;

- UBS notified the Market Operator, ASX within the required time that facilitated cancellation of the trades;

- UBS did not self–report the contravention to ASIC;

- UBS formed a view that the breach was not significant for the purpose of paragraph 912D(1)(b) of the Act, and did not therefore self–report to ASIC; and

- UBS did not derive any actual or potential benefit from the contravention, nor did UBS cause any actual or potential damage to a third party.

Compliance with the Infringement Notice

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

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

(a) starts on the day on which the infringement notice is given to UBS; and

(b) ends 27 days after the day on which the infringement notice is given to UBS,

unless an application is made for its extension.

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

If UBS 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.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

(a) any liability of UBS 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 UBS 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 UBS 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) UBS is not taken to have admitted guilt or liability in relation to the alleged contravention; and

(e) UBS 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: 17 June 2013

Note: Members of the 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.