



ASIC

Australian Securities &
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Contents

Markets Disciplinary Panel Infringement Notice

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: Instinet Australia Pty Limited
Governor Phillip Tower
Level 24, 1 Farrer Place
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Instinet Australia Pty Limited ACN 131 253 686 ("Instinet") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Instinet must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$50,000**.

This infringement notice is given on 14 February 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP20496/13.

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. Certain additional defined terms used in this notice are also set out in the Appendix to this notice.

Alleged contravention and penalty

Instinet was a Trading Participant in the Market operated by the 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.

Instinet 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) On 23 March 2012 at 10:26:28, on behalf of a client of Instinet ("Client"), an Instinet DTR ("Instinet DTR") entered an Order into the ASX Trading Platform to sell 250,000 Renison Consolidated Mines NL March 2012 convertible notes, having ASX code ("RSNG"), at a limit price of \$0.10 ("Initial Order").
- 2) The Initial Order immediately traded in part, resulting in a Market Transaction for 50,000 RSNG at \$0.10.
- 3) The Client then requested that the Instinet DTR move the residual part of the Initial Order, being an Order to sell 200,000 RSNG at \$0.10 ("Relevant Order"), to the Client for the purposes of Direct Market Access ("DMA"). To this end, at 10:27:42, the Instinet DTR deleted the Relevant Order.
- 4) The Instinet DTR next intended to move the Relevant Order to the Client, however at 10:27:50, the Instinet DTR instead entered the Relevant Order back into the ASX Trading Platform – incorrectly keying in the price as 'at-market' instead of at \$0.10. Immediately prior to the entry of the Relevant Order, the last traded price for RSNG was \$0.10.
- 5) The Relevant Order immediately traded in part resulting in a Market Transaction for 20,000 RSNG at \$0.02 ("Relevant Transaction"). At 10:27:53, on realising his error, the Instinet DTR deleted the residual part of the Relevant Order.
- 6) The entry into the ASX Trading Platform of the Relevant Order, resulting in the Relevant Transaction, caused the price of RSNG to fall from \$0.10 to \$0.02, being an \$0.08 or 80% decrease in the price of RSNG.
- 7) At 11:35:00, Instinet informed ASIC of the Relevant Transaction, and then at 12:10:00, contacted the ASX to request its cancellation. The ASX advised Instinet that it would not cancel the Relevant Transaction as it was outside the 10 minute cancellation window, for cancellations that fell within the Qualifying Cancellation Range, as set out in procedure 3200 of the ASX Operating Rules Procedures.

By reason of Instinet's entry of the Relevant Order 'at-market' into the ASX Trading Platform on 23 March 2012, the MDP has reasonable grounds to believe that Instinet 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 Instinet to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 5.9.1, is \$1,000,000.

The maximum pecuniary penalty that may be payable by Instinet under an infringement notice given pursuant to 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 Instinet must pay to the Commonwealth is **\$50,000**.

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 promoting confidence in the integrity of the market. Imposing a strict obligation on Market Participants not to do anything which results in a market for a Product not being both fair and orderly, is critical in maintaining the integrity of the market;
- The misconduct had the potential to damage the reputation and integrity of the market, as the entry of the Relevant Order into the ASX Trading Platform at an 'at-market' price, caused the price of RSNG to decrease from the last traded price of \$0.10 to \$0.02, being an 80% decrease;
- The misconduct was inadvertent on the part of Instinet as the Instinet DTR failed to properly exercise his functions to the requisite high standard when he entered the Relevant Order back into the ASX Trading Platform (incorrectly keying in the price as 'at-market' instead of at \$0.10), instead of moving the Relevant Order to the Client as intended;
- The MDP noted in this matter that the Instinet DTR after keying in the Relevant Order 'at-market', did not receive any internal price variation warning messages or alerts prior to the Relevant Order entering into the ASX Trading Platform. Notwithstanding this, the MDP reiterated that an important aspect of the role of the DTR is to pay proper attention and diligence to prevent the entry of Orders into the Trading Platform that could result in a market that is not both fair and orderly. This is a critical measure in maintaining the integrity of a market;
- Instinet did not derive any actual or potential benefit from the breach;
- Instinet's DTR immediately became aware of the breach after the 'at-market' Relevant Order had entered into the ASX Trading Platform and resulted in the Relevant Transaction. Approximately 100 minutes later, Instinet requested the ASX cancel the Relevant Transaction. The ASX advised that it would not cancel the Relevant Transaction as it was outside the 10 minute cancellation window, as set out in procedure 3200 of the ASX Operating Rules Procedures;
- Instinet took the following remedial measures to prevent recurrence of the breach:
 - Immediately instructed DTRs not to use the 'at market' functionality; and

- From 29 March 2012, removed DTRs' ability to place orders 'at market' from Instinet's Automated Order Processing system.
- Instinet had recently been sanctioned by the MDP regarding a contravention of Rule 5.6.1(a) of the ASIC Market Integrity Rules (ASX Market) 2010 (MDP Infringement Notice No. MDP06/13, dated 8 August 2013). The MDP confirmed its position that repeat contraventions in similar or comparable matters would not be viewed favourably;
- Instinet co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Instinet agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

If Instinet 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 Instinet; and
- (b) 7 days after the notice of refusal is given to Instinet.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Instinet to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged;

- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against Instinet 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;
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against Instinet 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;
- (d) Instinet is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Instinet 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 MDP

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

Dated: 14 February 2014

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

The terms defined in MIR 1.4.3 have the same meaning when used in this notice, including:

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

"Automated Order Processing" 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 corresponding Trading Messages without being keyed or rekeyed by a DTR.

"DTR" means a Representative of the Trading Participant who has been authorised 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.

"Market Transaction" means a transaction for one or more Products, entered into on a Trading Platform or reported to the Market Operator 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;

....

"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.

This notice adopts the following additional definitions of terms:

"Direct Market Access" means an Order submitted by a client of a Trading Participant into the Trading Participant's system and subject to Automated Order Processing.

"Qualifying Cancellation Range" means the range set out in procedure 3200 of the ASX Operating Rules Procedures as defined in rule [7100] of section 7 of the ASX Operating Rules as at 23 March 2012.