



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

No. MDP05/14, Wednesday 19 March 2014

Published by ASIC

ASIC Gazette

Contents

Markets Disciplinary Panel Infringement Notice

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: Hartleys Limited
Level 6, 141 St Georges Terrace
PERTH WA 6000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Hartleys Limited ACN 104 195 057 ("Hartleys") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Hartleys must:

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

This infringement notice is given on 17 February 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP20380/13.

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

Hartleys 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.

Hartleys 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 25 October 2012, on behalf of a client of Hartleys ("Client"), a Hartleys DTR ("Hartleys DTR") was working an Order to sell 35 million ABM Resources NL fully paid ordinary shares having ASX code ("ABU"), for the day ("Initial Order"). By approximately 15:59:00, the Hartleys DTR had sold 34.5 million ABU of the Initial Order.
- 2) As the market was nearing the close for the day, the Hartleys DTR next intended to sell the residual of the Initial Order being an Order to sell 500,000 ABU at a limit price of \$0.053. However, at 15:59:54, the Hartleys DTR instead entered an Order to sell 500,000 Tanami Gold NL fully paid ordinary shares having ASX code ("TAM"), at a limit price of \$0.053 ("Relevant Order") – by incorrectly keying in the ASX code as TAM instead of the intended ABU. Immediately prior to the entry of the Relevant Order into the ASX Trading Platform, the last traded price for TAM was \$0.795.
- 3) Upon entering into the ASX Trading Platform, the Relevant Order immediately traded in part resulting in multiple Market Transactions for a total of 316,183 TAM down to a price of \$0.50 ("Relevant Transactions"). At 16:01:08, on realising his error, the Hartleys DTR deleted the residual part of the Relevant Order.
- 4) The entry into the ASX Trading Platform of the Relevant Order, resulting in the Relevant Transactions, caused the price of TAM to fall from \$0.795 to \$0.50, representing a 37% decrease in the price of TAM.
- 5) Following the execution of the Relevant Transactions, Hartleys contacted the ASX requesting cancellation of the Relevant Transactions, as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time. The ASX advised Hartleys that it made cancellation requests to the counterparties of the Relevant Transactions which did not fall within the No Cancellation Range (i.e. the Relevant Transactions executed below \$0.68). However, given that the Relevant Transactions executed below \$0.68 did not fall within the Extreme Cancellation Range, the counterparties had decided not to cancel.

By reason of Hartleys' entry of the Relevant Order into the ASX Trading Platform on 25 October 2012, the MDP has reasonable grounds to believe that Hartleys has contravened MIR 5.9.1 and thereby contravened section 798H(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Hartleys 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 Hartleys 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 Hartleys 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 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 caused the price of TAM to fall from the last traded price of \$0.795 to \$0.50, being a 37% decrease;
- The misconduct was inadvertent on the part of Hartleys as the Hartleys DTR failed to properly exercise his functions to the requisite high standard when he did not pay attention and incorrectly keyed in the ASX code as TAM instead of the intended ABU, before submitting the Relevant Order into the ASX Trading Platform;
- The MDP noted in this matter that the Hartleys DTR did not receive any price variation warning messages or alerts prior to the Relevant Order entering into the ASX Trading Platform because his trading workstation's parameters had not been configured correctly. 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;
- Hartleys did not derive any actual or potential benefit from the breach;
- Upon becoming aware of the breach following the execution of the Relevant Transactions, Hartleys immediately requested the ASX cancel the Relevant Transactions, however the ASX advised that it would not cancel the Relevant Transactions because they either fell within the No Cancellation Range or did not fall within the Extreme Cancellation Range, as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time;
- The misconduct was an isolated incident;

- Hartleys had no contraventions found against it by the MDP regarding non-compliance with the market integrity rules and only two previous contraventions found against it by the ASX Disciplinary Tribunal since 2010 regarding non-compliance with the ASX Market Rules;
- Hartleys fully co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Hartleys agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Hartleys 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 Hartleys 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;

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- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against Hartleys 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) Hartleys is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Hartleys 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 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).

"DIR" 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" 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;

...

"Product" means a Cash Market Product.

"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:

"Extreme 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 25 October 2012.

"No 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 25 October 2012.