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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Barclays Bank PLC

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

Barclays Bank PLC
Level 42,
Grosvenor Place
225 George Street
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Barclays Bank PLC, (ABN 062 449 585) ("Barclays") under regulation 7.2A.04 of the Corporations Regulations 2001 ("the Regulations"). To comply with this notice Barclays must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
\$80,000.

This infringement notice is given on 12 September 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is
MDP4197/12.

Alleged contravention and penalty

Barclays was a participant in a market operated by the Australian Securities Exchange Limited (formerly known as the Sydney Futures Exchange Limited), being ASX 24 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 the relevant time.

Barclays is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 2.2.6(d) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* ("MIR 2.2.6(d)"), which provides:

"Permitted withdrawal

Withdrawals from a Clients' segregated account made in any of the following circumstances are permissible:

- (i) *paying Margins and the settling of Dealings;*

- (ii) *making a payment to, or in accordance with the written direction of, a person entitled to the money;*
- (iii) *defraying brokerage and other proper charges;*
- (iv) *paying to the Market Participant money to which the Market Participant is entitled, whether at law or under the Rules or Market Operating Rules; and*
- (v) *making a payment that is otherwise authorised by law".*

On the evidence before it, ASIC's Markets Disciplinary Panel was satisfied that:

- 1) On 25 January 2011, a representative of Barclays' London operations department by e-mail to Barclays' Sydney operations department requested that the London office receive \$13.8 million Australian Dollars ("M13.8") from Barclays Sydney, to be withdrawn from the Barclays London office house account held by Barclays Sydney on 27 January 2011.
- 2) On 27 January 2011, M13.8 was withdrawn from the Barclays' Client Segregated account ("CSA"). The M13.8 was then deposited into the Barclays London operations account. The M13.8 withdrawal from CSA was erroneous as the money should have been withdrawn from the Barclays house account rather than the CSA.
- 3) On 31 January 2011, and 2 February 2011, respectively, a representative of Barclays' Sydney operations department sent e-mails to representatives of Barclays Singapore operations department, Barclays Futures Cash team and the Sydney Futures operations department advising of the error and requested advice on the best way to correct the error.
- 4) On 2 February 2011, and 3 February 2011, a number of e-mails were sent between Barclays' Sydney, London and Singapore operations departments discussing how to resolve the error.
- 5) On 3 February 2011, Barclays Sydney operations department instructed transfer of M13.8 from the Barclays house account into the CSA to rectify the error.
- 6) On 4 February 2011, M13.8 was deposited into the CSA to correct the erroneous withdrawal on 27 January 2011.

By reason of Barclays withdrawal of M13.8 from its CSA instead of its house account on 27 January 2011, the Markets Disciplinary Panel has reasonable grounds to believe that Barclays has contravened MIR 2.2.6(d) 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 Barclays to pay for contravening the market integrity rule that Barclays 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 Barclays must pay to the Commonwealth is \$80,000.

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

In determining the appropriate penalty in this matter the MDP took into account all relevant guidance in ASIC Regulatory Guide 216 and noted in particular the following:

- MIR 2.2.6(d) is aimed at ensuring the segregation of client monies from that of the participant, with a strict, mandatory obligation on participants to hold and use client monies only as permitted;
- The unauthorised withdrawal of client monies was due to the carelessness of Barclays by failing to ensure that client monies were not withdrawn in error;
- The conduct of Barclays was further compounded by the fact that the erroneous withdrawal of \$M13.8 client monies was not identified, escalated and rectified immediately, but instead subject to discussions by various Barclays' international offices held over at least five business days;
- Barclays ultimately rectified the situation five business days after it was first identified. Barclays' clients could potentially have suffered damage if Barclays had become insolvent during the five day period from the day the client monies were erroneously withdrawn to the day the client monies were deposited into the CSA;
- The MDP considers any breaches of the rules relating to client money segregation to be particularly serious in nature;
- Barclays has undertaken remedial action to prevent recurrence by carrying out an independent review of all CSA statements from March 2008, reviewed and revised its policies and procedures around client monies, implemented additional controls around its handling of client money, conducted training to relevant staff around handling of client money and recruited additional senior experienced staff to provide closer oversight;
- Barclays self reported the breach to ASIC on 17 February 2011, fourteen days after the breach was first identified, which was an unacceptable delay in the circumstances;
- Barclays has co-operated with ASIC in the investigation of the matter;
- Barclays agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- Barclays has a good disciplinary history and had no previous contraventions found against it by the MDP. Barclays also had no previous contraventions made against them by the ASX Disciplinary Tribunal at the time the matter was considered by the MDP.

Compliance with the Infringement Notice

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

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

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

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

If Barclays 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.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Barclays 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 Barclays 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 Barclays 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) Barclays is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Barclays 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: 12 September 2012