ASIC Gazette

Contents

Markets Disciplinary Panel Infringement Notice

Recipient: D2MX Pty Ltd

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

ASIC
Australian Securities & Investments Commission

MDP
Markets Disciplinary Panel

PART 7.2A OF THE CORPORATIONS REGULATIONS 2001
INFRINGEMENT NOTICE

To: D2MX Pty Ltd
Level 37, Rialto South Tower
525 Collins Street
MELBOURNE VIC 3000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to D2MX Pty Ltd ACN 113 959 596 ("D2MX") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice D2MX must:

> Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **$110,000**.

This infringement notice is given on 5 March 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP18891/13.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 1.4.3") 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

D2MX 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.

D2MX is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 5.6.3(a) and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.3(a)" and "MIR 5.9.1").

MIR 5.6.3(a) 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 21 September 2011, a client of D2MX ("Client") was granted Direct Market Access ("DMA") through D2MX's Automated Order Processing ("AOP") system.

2) Between 21 September 2011 and 29 March 2012 ("Relevant Period"), D2MX deliberately deactivated the 'price movement from last' AOP filter with respect to Derivative Market Contract Orders received from the Client. D2MX made the deliberate decision to deactivate because the Client was known to D2MX and, in D2MX's opinion, appropriately experienced.

3) On 29 March 2012, at 1:55pm, the Client by DMA entered an Order to sell 940 BHP Billiton Limited exchange traded March 2012 $43.51 put options, having at the time ASX code ("BHPUL9"), at a price of $0.06 via D2MX's AOP system ("Relevant Order").

4) The last traded price of BHPUL9 immediately prior to the entry of the Relevant Order, was $9.23. The Relevant Order was erroneous as the Client had intended to enter an Order to sell six BHPUL9 at $9.40.

5) As a result of the 'price movement from last' AOP filter being deactivated on the Client's account, the Relevant Order was able to be submitted via D2MX's AOP system into the Trading Platform and trade immediately in full resulting in the following 13 Market Transactions ("Relevant Transactions"):

   - one Market Transaction for 30 BHPUL9 at $8.83;
   - one Market Transaction for 140 BHPUL9 at $8.80; and
   - eleven Market Transactions for 770 BHPUL9 at $0.06.

6) The Relevant Order caused the price of BHPUL9 to decrease from the last traded price of $9.23 to $0.06, representing a decrease of 99.3%.

7) On becoming aware of the Relevant Order, D2MX contacted the ASX and requested cancellation of the Relevant Transactions. The ASX directed that 11 of the Relevant Transactions, being the 11 Market Transactions for 770 BHPUL9 at $0.06, be cancelled as they transacted in the Extreme Cancellation Range as set out in procedure 3200 of the ASX Operating Rules Procedures.

8) D2MX were unable to provide records detailing the reason(s) for, and/or the time(s) that the 'price movement from last' AOP filter was activated/deactivated during the Relevant Period.

By reason of D2MX's entry of the Relevant Order into the ASX Trading Platform on 29 March 2012, the MDP has reasonable grounds to believe that D2MX has contravened MIR 5.6.3(a) and MIR 5.9.1, and thereby contravened subsection 798H(1) of the Act in that:

- D2MX failed to have in place organisational and technical resources, including having a 'price movement from last' automated filter and processes to record any changes to the automated filters, which interfered with the efficiency and integrity of the Market and the proper functioning of the Trading Platform; and

- D2MX's misconduct resulted in a market not both fair and orderly as the Relevant Order caused the price of BHPUL9 to decrease from $9.23 to $0.06, representing a decrease of 99.3%.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order D2MX to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 5.6.3(a), is $1,000,000;
- by reason of contravening MIR 5.9.1, is $1,000,000.

The maximum pecuniary penalty that may be payable by D2MX under an infringement notice given pursuant to subsection 798K(2) of the Act:

- for an alleged contravention of MIR 5.6.3(a), is $600,000;
- for an alleged contravention of 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(a) – $80,000;
- MIR 5.9.1 – $30,000.

Therefore, the total penalty that D2MX must pay to the Commonwealth is **$110,000** being the penalty payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act.

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 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(a) is aimed at promoting confidence in the integrity of the market. Ensuring that Trading Participants with AOP systems have in place adequate organisational and technical resources to operate without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform, is critical in maintaining the

integrity of the market. This includes having appropriate filters, filter parameters and processes to record any changes to filters or filter parameters;

- Appropriate automated filters are essential components of DMA AOP systems used by clients of Trading Participants. Appropriate automated filters are in place to ensure Orders are submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform. Processes to record any changes made to automated filters serve an important AOP system risk mitigation function;

- D2MX failed to ensure that at all times its AOP system had in place or had activated appropriate automated filters, and failed to ensure that it had in place processes to record any changes to the automated filters. The failure of D2MX to ensure that its AOP system had these safeguards in place risked undermining public confidence in the integrity of the market;

- If, for whatever reason appropriate automated filters are deactivated or otherwise unavailable, then a Trading Participant's system must not be used for AOP, instead Orders should be submitted for entry into the Trading Platform through a DTR or not be submitted at all. Notwithstanding this, the MDP noted the difficulty in setting appropriate automated filters for Options Orders;

- Additionally, it is unacceptable for Trading Participants to deactivate or otherwise make changes to their automated filters without being in a position to record any changes made including the reasons underlying any changes made;

- 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 BHPUL9 to decrease from the last traded price of \$9.23 to \$0.06, being a 99.3% decrease;

- D2MX's conduct of deactivating the 'price movement from last' AOP filter on the Client's account was deliberate, and thereby conduct of an intentional type;

- The breaches were of a serious nature;

- One course of conduct resulted in two breaches of the market integrity rules, being one breach of MIR 5.6.3(a) and one breach of MIR 5.9.1;

- D2MX did not derive any actual or potential benefit from the breaches;

- D2MX took action to prevent recurrence of the breaches on 29 March 2012 at a time after the Relevant Transactions, by reactivating the 'price movement from last' AOP filter on the Client's account;

- D2MX had no history of non-compliance with the market integrity rules or ASX Market Rules, including no previous contraventions found against it by the MDP;

- D2MX co-operated with ASIC throughout its investigation and did not dispute any material facts; and

- D2MX agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

D2MX may choose not to comply with this infringement notice, but if D2MX does not comply, civil proceedings may be brought against D2MX in relation to the alleged contravention.

To comply with this infringement notice, D2MX must pay the penalty within the compliance period. The compliance period:

(a)   starts on the day on which the infringement notice is given to D2MX; and

(b)   ends 27 days after the day on which the infringement notice is given to D2MX;

unless an application is made for its extension.

D2MX may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If D2MX does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If D2MX 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 D2MX; and

(b)   7 days after the notice of refusal is given to D2MX.

D2MX may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If D2MX does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to D2MX.

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

(a)   any liability of D2MX 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 D2MX 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 D2MX 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)   D2MX is not taken to have admitted guilt or liability in relation to the alleged contravention; and

(e)   D2MX 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: 5 March 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.

"Derivative Market Contract" means a Futures Market Contract, an Options Market Contract and any other contract that the Market Operator authorises for trading on a Trading Platform as a Derivatives Market Contract.

"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.

"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" means, 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 or a Derivative Market Contract, as applicable.

"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 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.

"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 29 March 2012.