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Contents

Markets Disciplinary Panel Infringement Notice

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001
INFRINGEMENT NOTICE

To: J. P. Morgan Securities Australia Limited
Level 18
83-85 Castlereagh Street
Sydney NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to **J. P. Morgan Securities Australia Limited** ("J. P. Morgan") under regulation 7.2A.04 of the *Corporations Regulations 2001* ("the Regulations"). To comply with this notice J. P. Morgan must:

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

This infringement notice is given on 19 October 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is 12453/12.

Alleged contravention and penalty

J. P. Morgan was a Trading Participant in the market operated by ASX Limited and was an entity required by subsection 798H (1) of the *Corporations Act 2001* ("the Act") to comply with the market integrity rules at all relevant times.

J. P. Morgan is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Market Integrity Rule 6.6.1 of the *ASIC Market Integrity Rules (ASX Market) 2010* ("MIR 6.6.1"), which provides:

> "*A Trading Participant must not effect a Special Crossing of any Cash Market Products (excluding Warrants) of an Issuer, on behalf of that Issuer during the term of a buy-back offer conducted On-Market by that Issuer.*"

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

(i) On 31 August 2011, J. P Morgan's client issued a Company Announcement advising that it intended to implement the fourth tranche of an On-Market Buy-back of its fully paid ordinary shares, namely NHF, and that J. P. Morgan would act as the broker in conducting the buy-back ("NHF Buy-Back");

(ii) On 24 February 2012, J. P. Morgan received instructions from an institutional client to sell a total of 8 million NHF and instructions from the Issuer of NHF ("the Issuer") to buy 8 million NHF, pursuant to the NHF Buy-back. J. P. Morgan executed the instructions via a Special Crossing for 8 million NHF at $1.46 per NHF ("Special Crossing 1"), which was reported to the Trading Platform by J. P. Morgan at 10:10:23 AEDST on 24 February 2012.

(iii) On 28 February 2012, J. P. Morgan, received instructions from two clients to sell a total of 5 million NHF and instructions from the Issuer to purchase 5 million NHF, pursuant to the NHF Buy-back. The instructions were executed via a Special Crossing for 5 million NHF at $1.46 per NHF ("Special Crossing 2"), which was reported to the Trading Platform by J. P. Morgan at 11:06:48 AEDST on 28 February 2012.

By reason of J. P. Morgan effecting Special Crossing 1 and Special Crossing 2 on behalf of the Issuer, pursuant to the buy-back of NHF which was being conducted On-Market, the Markets Disciplinary Panel has reasonable grounds to believe that J. P. Morgan contravened MIR 6.6.1 on 24 February 2012 and 28 February 2012, and thereby contravened subsection 798H(1) of the Act on those dates.

The purpose of MIR 6.6.1 is to:

(a) ensure fairness and transparency during the course of an On-Market buy-back; and

(b) minimize the risk that a Market Participant will cause or be involved in its client effecting a capital reduction in contravention of section 256D of the Act.

A capital reduction resulting from the cancellation of shares bought back On-Market is prohibited under that section unless the buy-back results from an order made in the ordinary course of trading on a relevant market: see section 257B(6). A buy-back by way of a Special Crossing is not of this kind.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order J. P. Morgan to pay for contravening MIR 6.6.1 is $100,000. The maximum penalty that may be payable under an infringement notice for an alleged contravention of that rule is $60,000.

Penalty under the Infringement Notice

The penalty payable under this infringement notice for the alleged contravention of subsection 798H(1) of the Act are as follows:

- Special Crossing 1 on 24 February 2012 — **$25,000**; and
- Special Crossing 2 on 28 February 2012 — **$5,000**.

The total penalty that J. P. Morgan must pay to the Commonwealth is **$30,000**.

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, ASIC's Markets Disciplinary Panel took into account all relevant guidance in ASIC Regulatory Guide 216 and noted in particular the following:

- The execution of a Special Crossing during and pursuant to an On-Market buy-back by the Issuer, risks undermining the principles of fairness and transparency and so operates as a risk to public confidence in the Market;

- There were two Special Crossings, each in apparent breach of MIR 6.6.1. Special Crossing 2 being a repetition of Special Crossing 1 and substantially part of the same course of conduct;

- It is accepted by the MDP that the breaches were inadvertent and a result of human error;

- The J. P. Morgan Designated Trading Representative brought the matter to the attention of J. P. Morgan's Equity Compliance team when he realised his error;

- J. P. Morgan had an internal policy that referred to MIR 6.6.1 and upon becoming aware of the contraventions, immediately took an extensive range of remedial action to prevent a recurrence of the incidents;

- J. P. Morgan has subsequently established a procedure whereby its Equity Compliance team is notified where J. P. Morgan is engaged in an On-Market buyback on behalf of an Issuer, the security will be added to a watchlist and daily reports will be generated identifying any Special Crossings effected by J. P. Morgan in those securities.

- J. P. Morgan did not self-report the alleged contravention to ASIC. J.P. Morgan believed the matter did not require reporting after conducting an investigation which had regard to the provisions of section 912D of the Corporations Act 2001;

- J. P. Morgan has no recorded history of non-compliance with the Market Integrity Rules;

- J. P. Morgan fully co-operated with ASIC throughout its investigation and did not dispute any material facts; and

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

Compliance with the Infringement Notice

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

To comply with this infringement notice, J. P. Morgan must pay the Penalty within the compliance period. The compliance period:

(a) starts on the day on which the infringement notice is given to J. P. Morgan; and
(b) ends 27 days after the day on which the infringement notice is given to J. P. Morgan;

unless an application is made for its extension.

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

If J. P. Morgan 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.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

(a) any liability of J. P. Morgan 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 J. P. Morgan 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 J. P. Morgan 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) J. P. Morgan is not taken to have admitted guilt or liability in relation to the alleged contravention; and
(e) J. P. Morgan 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 and Investments Commission

Dated: 19 October 2012

Note: Members of ASIC's Market 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.