24 September 2012 **MDP CIRCULAR 2012- 04**

DISCIPLINARY MATTER – COMMONWEALTH SECURITIES LTD

Commonwealth Securities Ltd ("CommSec") has paid a penalty of **$50,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel.

Background and circumstances

CommSec is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* (the Act) by reason of contravening Rule 5.5.2 of the *ASIC Market Integrity Rules (ASX Market) 2010* ("MIR 5.5.2"), which provides:

> *"A Trading Participant must have and maintain the necessary organisational and technical resources to ensure that:*
>
> *a. Trading Messages submitted by the Trading Participant do not interfere with:*
>
> *i. the efficiency and integrity of the Market; or*
> *ii. the proper functioning of a Trading Platform; and*
>
> *b. The Trading Participant complies at all times with these Rules and the Market Operating Rules."*

On the evidence before it, the Markets Disciplinary Panel had reason to believe that:

1) Between 4 August 2010 and 20 January 2011 (inclusive), CommSec, on account of its client, executed 48 Crossings in the fully paid ordinary shares of Oaks Hotels & Resorts Limited, ACN 113 972 366, having ASX code 'OAK'. During the Relevant Period, the client placed 96 Orders in Oaks Hotels & Resorts Limited, ACN 113 972 366, having ASX code 'OAK', 48 on an account in the name of the client and 48 on an account in the name of the client & the client's wife ("the 48 Crossings").

2) The 48 Crossings involved no change in beneficial ownership ("NCBO") and falsely represented 11.88% on bona fide volume in OAK, creating the misleading appearance of active trading. This is inconsistent with the efficiency and integrity of the market as participants are likely to assume that the transactions reflect genuine supply and demand and act accordingly.

3) While CommSec did have filters and reviews in place to identify and prevent NCBO Orders from entering the market during the Relevant Period, the filters and reviews were not designed to filter NCBO transactions from accounts that were connected, but had different account numbers.

4) Three of the 48 Crossings, which did trigger unrelated filters, were reviewed and approved by CommSec Designated Trading Representatives ("DTRs").

By reason of CommSec not having and maintaining the necessary organisational and technical resources to ensure that the Trading Messages that resulted in the 48 Crossings were not submitted to the Trading Platform, the Markets Disciplinary Panel has reason to believe that CommSec has contravened MIR 5.5.2 and thereby contravened subsection 798H(1) of the Act.

Relevant factors

Factors that were considered in determining the penalty and remedy to be applied in relation to the alleged breach included:

- MIR 5.5.2 is aimed at reinforcing the importance of having appropriate organisational and technical resources so that orders incompatible with the efficiency and integrity of the market are not submitted to the Trading Platform and the MIRs and Market Operating Rules are otherwise complied with;

- The conduct on the part of CommSec appears to have been reckless. Three of the Orders triggered filter alerts, and although this was not for NCBO reasons, the Orders were diverted to the relevant DTR for review who reviewed and approved them, despite the Orders being NCBO transactions;

- CommSec did have filters and reviews in place regarding NCBO Orders. However, the filters and reviews were inadequate as they were designed only to identify and filter NCBO transactions in which the account number was the same on both sides. The filters and reviews were not designed to filter NCBO transactions from accounts that were connected, but had different account numbers;

- CommSec has co-operated with ASIC and attempted to address concerns arising from the investigation, by way of engagement with ASIC;

- CommSec did not self-report the alleged breach to ASIC, but did report the matter to another regulator, and closed the client account on 11 February 2011;

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

- One relevant action has been taken against CommSec in relation to the market integrity rules, and CommSec has been sanctioned by the ASX Disciplinary Tribunal on seven occasions since 2002.

The Markets Disciplinary Panel ("the MDP")

The MDP is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the regulations.

Additional regulatory information

Pursuant to subparagraph 7.2A.15(4)(b)(i) and (ii) of the Corporations Regulations 2001, CommSec has complied with the infringement notice, such compliance is not an admission of guilt or liability, and CommSec is not taken to have contravened subsection 798H(1) of the Corporations Act.

Further information on market integrity infringement notices, the market integrity rules or the MDP is available in Regulatory Guide 216 – *Markets Disciplinary Panel* and Regulatory Guide 225 – *Markets Disciplinary Panel Practices and Procedures* or at http://www.asic.gov.au under "markets-supervision", "markets –market integrity rules" and "Markets Disciplinary Panel".