

DISCIPLINARY MATTER – Taylor Collison Limited

Taylor Collison Limited ("Taylor Collison") has paid a penalty of **\$30,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for failing to prevent the entry into the ASX Trading Platform of an erroneous Order which resulted in a market for BC Iron Limited ordinary shares not being both fair and orderly.

Background and circumstances

Taylor Collison is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Corporations Act") by reason of contravening Rule 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.9.1").

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 MDP was satisfied that:

- 1) On 20 August 2012, Taylor Collison received from a client ("Client 1"), an Order to sell 100,000 BC Iron Limited fully paid ordinary shares having ASX code 'BCI' at \$2.64 ("Order 1"); and separately received from another client ("Client 2"), an Order to buy 100,000 BCI at \$2.64 ("Order 2").
- 2) To facilitate the instructions of both Client 1 and Client 2, Taylor Collison treated Order 1 and Order 2 as a priority Crossing ("Priority Crossing"). The Priority Crossing was to be executed by a Taylor Collison Designated Trading Representative or DTR ("Taylor Collison DTR").
- 3) Between 11:16:00 and 11:18:33, to execute the Priority Crossing, the Taylor Collison DTR on six separate occasions attempted to establish a Crossing market by entering into the ASX Trading Platform a sell Order for a small volume of BCI at \$2.65. However on each occasion, the attempt to establish a Crossing market failed because the sell Order for BCI at \$2.65 was being bought before the Taylor Collison DTR could execute the Priority Crossing. This resulted in six Market Transactions at \$2.65 for 15 BCI in total.
- 4) The Taylor Collison DTR next sought to establish a Crossing market by entering into the ASX Trading Platform a sell Order for a larger volume (4,985) of BCI at \$2.65. The Taylor Collison DTR then intended to Cross 95,000 BCI at \$2.64 followed by the residual 4,985 BCI also at \$2.64. However, at 11:20:39, the Taylor Collison DTR erroneously keyed the price as \$4.64 into the Trader Workstation he was logged into, instead of the intended \$2.64, and submitted into the ASX Trading Platform a Priority Crossing for 95,000 BCI at \$4.64 ("Relevant Order").

- 5) No internal 'price variation' warning messages or alerts were generated after the keying of the Relevant Order into the Trader Workstation and before its submission into the ASX Trading Platform. This was because the ASX Trader Workstation the Taylor Collison DTR was logged into had had its user set soft filters disabled by the Taylor Collison DTR.
- 6) The market in BCI immediately prior to the entry of the Relevant Order was \$2.64/ \$2.65/ \$2.65 (Bid/ask/last traded price).
- 7) The Relevant Order immediately traded resulting in 19 Market Transactions for a total of 79,164 BCI at prices between \$2.65 and \$3.50, with the residual of 15,836 BCI being Crossed at \$4.64 ("Relevant Transactions"). As a result, the Relevant Order caused the price of BCI to increase from \$2.65 to \$4.64, being an increase of \$1.99 or 75%.
- 8) On identifying the Relevant Transactions, another DTR from Taylor Collison at approximately 11:24:00, initially notified the ASX of the Relevant Order and requested cancellation of the Relevant Transactions as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time. The ASX advised Taylor Collison that it would not cancel the Relevant Transactions as they were not in the Extreme Cancellation Range, in accordance with Rule 2.2.1 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 ("MIR CEM 2.2.1"), and also because the counterparties to the Relevant Transactions would not agree to cancellation. Notwithstanding this, Taylor Collison self-cancelled the 15,836 BCI at \$4.64 at 11:21:07 and also the 4,985 BCI at \$2.65 at 11:40:03.

By reason of Taylor Collison's entry of the Relevant Order into the ASX Trading platform on 20 August 2012, the MDP had reasonable grounds to believe that Taylor Collison contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the Corporations Act which requires compliance with the market integrity rules.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Taylor Collison to pay for contravening subsection 798H(1) of the Corporations Act by reason of contravening MIR 5.9.1, is \$1,000,000.

Pursuant to subsection 798K(2) of the Act, the maximum pecuniary penalty that may be imposed by the MDP and payable by Taylor Collison under an infringement notice given for contravening subsection 798H(1) of the Corporations Act by reason of allegedly contravening MIR 5.9.1, is \$600,000.

Penalty under the Infringement Notice

The penalty payable under the infringement notice for the alleged contravention of subsection 798H(1) of the Corporations Act and therefore the penalty that Taylor Collison must pay to the Commonwealth, is **\$30,000**.

Relevant factors

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance 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 BCI to increase from the last traded price of \$2.65 to \$4.64, being a 75% increase;
- The misconduct was inadvertent on the part of Taylor Collison as the Taylor Collison DTR failed to properly exercise his functions to the requisite high standard when he erroneously keyed in the price as \$4.64 instead of the intended \$2.64, before submitting the Relevant Order into the ASX Trading Platform;
- The MDP noted in this matter that the Taylor Collison DTR, after keying the Relevant Order into the Trader Workstation he was logged into, did not receive any internal price variation warning messages or alerts prior to the Relevant Order being submitted into the ASX Trading Platform. Notwithstanding this, the MDP reiterated that an important aspect of the role of the DTR, as an internal control, 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 the market;
- Taylor Collison did not derive any actual or potential benefit from the breach and in fact incurred a significant loss;
- There was one breach of MIR 5.9.1;
- Upon becoming aware of the breach, Taylor Collison immediately requested the ASX cancel the Relevant Transactions. This request for cancellation was made approximately three minutes after the Relevant Transactions. Notwithstanding this, the ASX would not cancel the Relevant Transactions as they were not in the Extreme Cancellation Range, in accordance with MIR CEM 2.2.1, and also because the counterparties to the Relevant Transactions would not agree to cancellation;
- In the prevention of recurrence of the misconduct, Taylor Collison had undertaken:
 - formal disciplinary action against the Taylor Collison DTR involved in the misconduct, including a formal warning and pecuniary penalty;
 - retraining of the Taylor Collison DTR and re-education of all its DTRs;
 - a review of all soft filter preference settings for all DTRs;
 - an alteration of its procedures to ensure that the 'price deviation' soft filter is activated at all times and also including procedures for regular spot-checks to ensure activation; and
 - a migration to the Fidessa ASX Best trading application which does not require a Crossing market to first be created before a Crossing is executed.
- Taylor Collison had no prior contraventions found against it by the MDP for non-compliance with the market integrity rules;
- Taylor Collison co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Taylor Collison agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

The Markets Disciplinary Panel

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 Corporations Regulations 2001 ("Regulations").

Additional regulatory information

Pursuant to subparagraphs 7.2A.15(4)(b)(i) and (ii) of the Regulations, Taylor Collison has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Taylor Collison 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 ASIC Regulatory Guide 216–*Markets Disciplinary Panel* and ASIC 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".