

**DISCIPLINARY MATTER – Commonwealth Securities Limited**

Commonwealth Securities Limited ("CommSec") has paid a penalty of **\$15,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for failing to prepare and provide accurate Crossing System Monthly Reports to ASIC.

**Background and circumstances**

CommSec is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Corporations Act") by reason of contravening Rule 4.3.2 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 ("MIR 4.3.2").

MIR 4.3.2, up to and including 27 March 2013, provided:

*"A Participant that operates a Crossing System during a calendar month must, within 20 business days of the end of the calendar month:*

- (a) prepare a report (the Crossing System Monthly Report) for that calendar month setting out:
  - (i) any changes to the information provided in the Crossing System Initial Report;*
  - (ii) for each day during the calendar month on which Orders were received or Transactions were matched or executed on the Crossing System, Crossing System Reporting Information for each relevant Equity Market Product for that day; and**
- (b) provide the Crossing System Monthly Report to ASIC."*

From 28 March 2013, the words "*relevant Equity Market Product*" in subparagraph MIR 4.3.2(a)(ii) were replaced with the words "*Relevant Product*".

On the evidence before it, the MDP was satisfied that:

- 1) From on or around 16 May 2011 to 23 May 2013, CommSec operated a certain Crossing System ("CommSec Crossing System") and was required to prepare and provide to ASIC Crossing System Monthly Reports ("CSMRs") in relation to the CommSec Crossing System, in accordance with MIR 4.3.2.
- 2) Between March 2012 and June 2013 inclusive ("Relevant Period"), CommSec prepared and provided to ASIC 16 CSMRs ("Relevant CSMRs") in relation to the CommSec Crossing System for the calendar months of February 2012 through to May 2013.
- 3) CommSec relied on a third party data vendor ("Vendor") to provide Crossing System Reporting Information ("CSRI") in the preparation of the Relevant CSMRs. The Relevant CSMRs did not contain all the required CSRI for the calendar months from February 2012

to May 2013. This was because on 22 February 2012, the Vendor began purging certain data or information in excess of seven days old used in compiling the CSRI. CommSec relied on representations that the data purge would not affect other processes.

- 4) On 4 April 2013, ASIC informed CommSec of a decline in Crossing System turnover in the Relevant CSMRs for the period August 2012 to January 2013.
- 5) CommSec subsequently undertook an internal review and on 31 July 2013, in accordance with paragraph 912D(1)(a) of the Act, notified ASIC that the Relevant CSMRs did not contain all the required CSRI; and that CommSec would re-provide the Relevant CSMRs inclusive of all the required CSRI ("Revised Relevant CSMRs") to ASIC.
- 6) On 14 August 2013, CommSec provided the Revised Relevant CSMRs to ASIC.
- 7) On 25 October 2013, CommSec deregistered the CommSec Crossing System as a Crossing System.

By reason of CommSec's failure to include all the required CSRI in the preparation of the Relevant CSMRs it provided to ASIC during the Relevant Period, the MDP had reasonable grounds to believe that CommSec contravened MIR 4.3.2 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 CommSec to pay for contravening subsection 798H(1) of the Corporations Act by reason of contravening MIR 4.3.2, is \$100,000.

Pursuant to subsection 798K(2) of the Corporations Act, the maximum pecuniary penalty that may be imposed by the MDP and payable by CommSec under an infringement notice given for contravening subsection 798H(1) of the Corporations Act by reason of allegedly contravening MIR 4.3.2, is \$60,000.

#### **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 CommSec must pay to the Commonwealth, is **\$15,000**.

#### **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 4.3.2 is primarily aimed at assisting ASIC in ensuring the integrity of markets. Imposing a strict obligation on Participants that operate Crossing Systems to prepare and provide accurate CSMRs to ASIC, is critical to ASIC's role in maintaining and facilitating fair and efficient markets and to continue to effectively carry out its responsibility for market supervision in the context of a changing market environment;
- Although the misconduct did not appear to directly impact the integrity of markets, it did however inhibit ASIC's function of supervising and ensuring the integrity of markets;
- The misconduct was careless on the part of CommSec. Despite CommSec's reliance on the Vendor to provide CSRI, CommSec neglected to ensure that the Relevant CSMRs it prepared and provided to ASIC contained all the required CSRI;
- The misconduct transpired over an unacceptable period of time of 16 months;

- The breach was not an isolated incident, rather it recurred multiple times throughout the Relevant Period;
- CommSec failed to detect the breach. CommSec only became aware of the breach after being informed by ASIC on 4 April 2013 of a decline in Crossing System turnover in the Relevant CSMRs for the period August 2012 to January 2013;
- CommSec did not gain any benefit, nor did it cause any detriment, as a result of the misconduct;
- CommSec took steps to prevent recurrence of the breach including:
  - undertaking an internal review;
  - allocating additional IT resources to recreate and test CSMRs provided to ASIC; and
  - arranging for the Vendor from 24 June 2013 to purge data in excess of 45 days old.
- CommSec had three prior contraventions found against it by the MDP for non-compliance with the market integrity rules. Since 2008, CommSec had also been sanctioned on three occasions by the ASX Disciplinary Tribunal for non-compliance with the ASX Market Rules;
- CommSec cooperated with ASIC throughout its investigation and did not dispute any material facts; and
- CommSec 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, 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 and 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–Markets Disciplinary Panel".