

DISCIPLINARY MATTER – ABN AMRO Clearing Sydney Pty Ltd

ABN AMRO Clearing Sydney Pty Ltd ("ABN AMRO") has paid a penalty of **\$40,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for failing to demonstrate prudent risk management procedures by not setting and documenting appropriate maximum price change limits, as required.

Background and circumstances

ABN AMRO is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Corporations Act") by reason of contravening Rule 2.2.1(1)(b) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 2.2.1(1)(b)").

MIR 2.2.1(1)(b) provides:

"(1) Limits:

A Market Participant must demonstrate prudent risk management procedures, including, but not limited to:

(b) set and document maximum price change limits;"

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

- 1) On 23 November 2011, the maximum price change ("MPC") limit for one Direct Market Access or DMA Client of ABN AMRO ("ABN AMRO Client") on its Client Account was set by ABN AMRO at 999.9 basis points from the last Traded price, or in its absence the Daily Settlement Price ("DSP"), for ASX 30 Day Interbank Cash Rate Futures Contracts.
- 2) On 23 November 2011 at approximately 16:40:00, the ASX published the DSP for the January 2013 ASX 30 Day Interbank Cash Rate Futures Contract ("IBF3"), being 97.070.
- 3) Between approximately 16:40:00 and 17:31:43, IBF3 did not Trade.
- 4) At 17:26:57, another Market Participant entered into the Trading Platform an implied Order to sell 200 IBF3 at 95.900 ("Counterpart Order"), being at a price 117 basis points lower than the prior IBF3 DSP of 97.070.
- 5) At 17:31:44, the ABN AMRO Client entered a DMA Order (through ABN AMRO's Automated Order Processing or AOP system) into the Trading Platform to buy 200 IBF3 at 95.900 ("Relevant Order"). The Relevant Order was also at a price 117 basis points lower than the prior IBF3 DSP of 97.070.
- 6) The Relevant Order was able to enter into the Trading Platform as ABN AMRO's AOP system had the MPC limit set at 999.9 basis points on the instance of the ABN AMRO Client's Client Account for ASX 30 Day Interbank Cash Rate Futures Contracts.

- 7) The Relevant Order Traded immediately and in full with the Counterpart Order and resulted in deal numbered 282 for 200 IBF3 at 95.900 ("Relevant Deal").
- 8) The Relevant Deal was the first Trade in IBF3 since publication of the DSP of 97.070 and was approximately \$600,000 below market value.
- 9) The Traded price of 95.900 placed the Relevant Deal in the Mandatory Cancellation Range as per rule [3210] of the ASX 24 Operating Rules at the relevant time, however the Relevant Deal was not cancelled.

By reason of ABN AMRO's failure to demonstrate prudent risk management procedures by not setting and documenting MPC limits for the ABN AMRO Client on 23 November 2011, the MDP had reasonable grounds to believe that ABN AMRO contravened MIR 2.2.1(1)(b) 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 ABN AMRO to pay for contravening subsection 798H(1) of the Corporations Act by reason of contravening MIR 2.2.1(1)(b), is \$1,000,000.

Pursuant to subsection 798K(2) of the Corporations Act, the maximum pecuniary penalty that may be imposed by the MDP and payable by ABN AMRO under an infringement notice given for contravening subsection 798H(1) of the Corporations Act by reason of allegedly contravening MIR 2.2.1(1)(b), 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 ABN AMRO must pay to the Commonwealth, is **\$40,000**.

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 2.2.1(1)(b) is aimed at ensuring that all Market Participants must at all times have and maintain appropriate controls to ensure that Orders submitted by them into a Trading Platform do not interfere with the integrity of the market;
- Market Participants are specifically required to set and document appropriate pre-determined Order and/or position limits on each Client Account. They are also required to set and document appropriate MPC limits on each Client Account.
- Setting MPC limits at a maximum or default setting of 999.9 basis points is inadequate and does not demonstrate prudent risk management procedures for a Market Participant with DMA Clients;
- The breach had the potential to damage the reputation and integrity of the Market. ABN AMRO's MPC limit of 999.9 basis points for ASX 30 Day Interbank Cash Rate Futures Contracts in the instance of the ABN AMRO Client's Client Account was inadequate. It failed to prevent the Relevant Order from entering into the Trading Platform resulting in the Relevant Deal Trading at 95.900, being at a price 117 basis points lower than the prior IBF3 DSP of 97.070 and representing a value approximately \$600,000 away from fair value;

- The breach was careless on the part of ABN AMRO. Despite ABN AMRO having procedures in place to determine and set MPC limits for Client Accounts, ABN AMRO in this instance neglected to set and document MPC limits for the ABN AMRO Client, instead relying on the inadequate maximum or default level of 999.9 basis points for ASX 30 Day Interbank Cash Rate Futures Contracts;
- The MDP reiterated that Market Participants ought to take proper care and exercise diligence in the setting and documentation of appropriate limits for every DMA Client. This is a critical measure in maintaining the integrity of a market;
- ABN AMRO did not derive any actual or potential benefit from the breach;
- ABN AMRO took the following remedial measures to prevent recurrence of the breach:
 - amended its MPC limits on the instance of the ABN AMRO Client's Client Account;
 - introduced a 'global risk policy' that includes a section on pre-trade filter functionalities;
 - completed a global project to assess its controls and review of pre-trade filter functionalities in all systems;
 - introduced a periodic limit review procedure for its risk department and DMA team;
 - reviewed and updated various procedures including the on-boarding procedure and the limit change procedure;
 - developed and implemented a query tracking tool to document all limit change requests;
 - expanded its DMA team; and
 - made improvements to its general compliance function, including recruiting new staff, developing new systems and having regular reviews by its parent entity.
- ABN AMRO had no prior contraventions found against it by the MDP for non-compliance with the ASIC Market Integrity Rules (ASX 24 Market) 2010, but had been sanctioned by the ASX Disciplinary Tribunal on one occasion relating to non-compliance with the Operating Rules of the Sydney Futures Exchange (ASX Circular 297/11 dated 29 December 2009);
- ABN AMRO had one prior contravention found against it by the MDP for non-compliance with the ASIC Market Integrity Rules (ASX Market) 2010 (Infringement Notice MDP08/13 dated 30 October 2013), and had been sanctioned by the ASX Disciplinary Tribunal on one occasion relating to non-compliance with the ASX Market Rules (ASX Circular 264/09 dated 12 August 2009);
- ABN AMRO co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- ABN AMRO 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, ABN AMRO has complied with the infringement notice, such compliance is not an admission of guilt or liability, and ABN AMRO 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".