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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: ICAP Futures (Australia) Pty Ltd

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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: ICAP Futures (Australia) Pty Ltd
Level 27
9-13 Castlereagh Street
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to ICAP Futures (Australia) Pty Ltd ACN 003 316 569 ("ICAP") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice ICAP must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$50,000**.

This infringement notice is given on 31 March 2015.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP11766/14.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 1.4.3") have the same meaning when used in this notice, including those set out in the Appendix to this notice. Certain additional defined terms used in this notice are also set out in the Appendix to this notice.

Alleged contraventions and penalty

ICAP was a Market Participant in the Market operated by Australian Securities Exchange Limited ACN 000 943 377 at the relevant time and was therefore an entity required by subsection 798H(1) of the *Corporations Act 2001* ("Act") to comply with the market integrity rules at that time.

ICAP is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 3.1.11 and 3.3.1A(1) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 3.1.11" and "MIR 3.3.1A(1)").

MIR 3.1.11 provides:

"A Market Participant must not execute or attempt to execute Trades with the intent to exclude other Market Participants or their Representatives."

MIR 3.3.1A commenced on 4 May 2013 (after Relevant Day One) and relevantly provides:

"(1) If counterparties have been solicited by a Market Participant pursuant to Rule 3.3.1(1)(a), the Market Participant must:

- (a) make an enquiry through the message facility of the Trading Platform for a market in that contract month or strategy;*
- (b) wait until the period of time prescribed by the Market Operator in the Market Operating Rules, or in the procedures to the Market Operating Rules, has elapsed since the entry of the enquiry or, if no such time is prescribed, 30 seconds; and*
- (c) then immediately enter the Order on the Trading Platform for execution."*

On the evidence before it, the Markets Disciplinary Panel ("MDP") was satisfied that:

Relevant Day One

- 1) On 19 March 2013, at approximately 10:22:19, an ICAP Employee ("Employee 1") contacted an ICAP Client ("Client 1") to enquire whether Client 1 was interested in buying June 2013 ASX 24 d-cypha NSW Base Load \$300 Cap Electricity Futures Contracts ("GNM3"). Client 1 expressed interest in buying GNM3.
- 2) At approximately 10:31:28, a second ICAP Employee ("Employee 2") contacted a second ICAP Client ("Client 2") and told Client 2 that ICAP had interest in GNM3 at \$1.45.
- 3) At approximately 10:31:53, Client 2 placed an Order with Employee 2 to sell nine GNM3 at \$1.45.
- 4) At approximately 10:32:26, Employee 1 told Client 1 that they could trade at \$1.45. Client 1 agreed.
- 5) At approximately 10:32:44, Employee 1 submitted an Order onto the Trading Platform to buy nine GNM3 at \$1.20 on behalf of Client 1.
- 6) At approximately 10:33:08, Employee 1 submitted an Order onto the Trading Platform to sell nine GNM3 at \$1.80 on behalf of Client 2.
- 7) At approximately 10:33:21, Employee 1 entered an inactive Order on ICAP's order system to sell nine GNM3 at \$1.45 on behalf of Client 2.
- 8) At approximately 10:33:33, Employee 1 entered an inactive Order on ICAP's order system to buy nine GNM3 at \$1.45 on behalf of Client 1.
- 9) At approximately 10:33:57, Employee 1 simultaneously activated these two Orders, sending them to the Trading Platform and resulting in a trade for nine GNM3 at \$1.45 with ICAP acting as buyer on behalf of Client 1 and seller on behalf of Client 2 ("Relevant Trade One").
- 10) ICAP did not make an enquiry through the message facility of the Trading Platform and wait the period set out in ASX 24 Operating Rule Procedure 4401.3 prior to entering the Orders which resulted in Relevant Trade One.

- 11) On 17 April 2013, ICAP notified ASIC Misconduct and Breach Reporting of its failure to comply with ASX 24 Operating Rule Procedure 4401.3 prior to Relevant Trade One. ICAP's notification did not make reference to a potential breach of Rule 3.1.11.

Relevant Day Two

- 12) On 7 August 2013, at approximately 14:39:33, an ICAP Employee ("Employee 3") contacted an ICAP Client ("Client 3") to enquire whether Client 3 was interested in buying a call option. Client 3 said that he would be interested in buying the call option with a delta hedge selling six Calendar 2015 ASX 24 Queensland Base Load Electricity Strip Futures Contracts ("HQZ5") at \$56.20.
- 13) At approximately 14:43:18, another ICAP employee ("Employee 4") contacted another ICAP Client ("Client 4") to enquire whether Client 4 was interested in selling the call option and buying six HQZ5 at \$56.20 as a delta hedge.
- 14) At approximately 14:52:39, Client 4 informed Employee 4 that he would buy six HQZ5 at \$55.75. At approximately 15:08:00, Client 4 amended his instruction to give ICAP discretion, which amendment was at the request of Employee 4.
- 15) At approximately 15:08:47, Employee 3 contacted Client 3 to discuss the trade and disclosed the price at which Client 4 was willing to trade.
- 16) At approximately 15:08:57, Employee 4 placed an Order onto the Trading Platform to buy six HQZ5 at \$55.25 on behalf of Client 4.
- 17) At approximately 15:12:06, Client 3 confirmed to Employee 3 that he would buy the call option and sell six HQZ5 at \$55.75 as a delta hedge. At Employee 3's request, Client 3 made this an Order with discretion.
- 18) At approximately 15:13:41, Employee 3 entered an Order onto the Trading Platform to sell five HQZ5 at \$57.10 on behalf of Client 3.
- 19) At approximately 15:14:39, Employee 3 entered an inactive Order on ICAP's order system to sell six HQZ5 at \$55.75 on behalf of Client 3.
- 20) At approximately 15:15:27, Employee 3 entered an inactive Order on ICAP's order system to buy six HQZ5 at \$55.75 on behalf of Client 4.
- 21) At approximately 15:16:31, Employee 3 simultaneously activated these two Orders, sending them to the Trading Platform and resulting in a trade for six HQZ5 at \$55.75 with ICAP acting as buyer on behalf of Client 4 and seller on behalf of Client 3 ("Relevant Trade Two").
- 22) ICAP did not make an enquiry through the message facility of the Trading Platform and wait the prescribed period as set out in Rule 3.3.1A(1) prior to entering the Orders which resulted in Relevant Trade Two.
- 23) At approximately 15:24:39, ICAP notified the Market of the block trade for the call option via the message facility.

By reason of ICAP's entry of inactive Orders and the simultaneous activation of those Orders with the intent to exclude other Market Participants or their Representatives on 19 March 2013, the MDP has reasonable grounds to believe that ICAP has contravened MIR 3.1.11, and thereby contravened subsection 798H(1) of the Act.

By reason of ICAP's entry of inactive Orders, the simultaneous activation of those Orders with the intent to exclude other Market Participants or their Representatives and the failure to make an enquiry through the message facility and wait the prescribed period on 7 August 2013, the MDP has reasonable grounds to believe that ICAP has contravened MIR 3.1.11 and MIR 3.3.1A(1), and thereby contravened subsection 798H(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order ICAP to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 3.1.11, is \$100,000; and
- by reason of contravening MIR 3.3.1A(1), is \$100,000.

The maximum pecuniary penalty that may be payable by ICAP under an infringement notice given pursuant to subsection 798K(2) of the Act:

- by reason of allegedly contravening MIR 3.1.11, is \$60,000; and
- by reason of allegedly contravening MIR 3.3.1A(1), is \$60,000.

Penalty under the Infringement Notice

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

- MIR 3.1.11 on 19 March 2013 - \$15,000;
- MIR 3.1.11 on 7 August 2013 - \$30,000; and
- MIR 3.3.1A(1) on 7 August 2013 - \$5,000.

Therefore, the total penalty that ICAP must pay to the Commonwealth is **\$50,000** being the penalty payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance, including ASIC Regulatory Guide 216 – *Markets Disciplinary Panel*, and noted in particular the following:

- MIR 3.1.11 is aimed at ensuring a fair, open and transparent trading system, with a strict obligation imposed on Market Participants not to trade to the exclusion of others;

- MIR 3.3.1A facilitates this aim by requiring Market Participants to give others notice of an intention to trade;
- MIR 3.3.1A was adopted from ASX 24 Operating Rule Procedure 4401 to ensure alignment with supervisory policy and procedure requirements to assist market participants of the ASX 24 Market to comply with market integrity rules, operating rules and the Act;
- The misconduct on both days had the potential to damage the reputation and integrity of the market for the relevant Contracts because it impacted the fairness of the market, by preventing others from participating in the Relevant Trades, and reduced the transparency of the market, by not providing pre-trade information on the opposing Orders which transacted in Relevant Trades One and Two;
- ICAP self- reported the misconduct on Relevant Day One under section 912D of the Act however this self – report was neither timely nor did it address all potential breaches arising from the misconduct. Further, ICAP were required to self – report the misconduct of Relevant Day Two however failed to do so, notwithstanding that ASIC were aware of the misconduct;
- The misconduct concerned was intentional for all alleged breaches;
- The misconduct concerned was of a serious nature for all alleged breaches;
- There was no or minimal damage actually or potentially caused to a third party;
- ICAP undertook remedial actions after the conduct on Relevant Day One, including:
 - conducting a Training programme in relation to Expressions of Interest, Discretionary Orders and Pre- Negotiated business as well as the relevant market integrity rules; and

re-locating Compliance to the trading floor.
- The MDP regards it as commendable and best practice generally for Compliance to have a presence on the trading floor and particularly where there have been ongoing compliance issues despite education and training initiatives;
- Notwithstanding the Training programme and the relocation of Compliance, these remedial actions undertaken did not prevent the same conduct of Relevant Day One from reoccurring on Relevant Day Two, albeit in different circumstances. It is imperative that any remedial actions undertaken must not only provide remediation for conduct that has transpired but also serve to prevent future conduct of identical or like nature.

- ICAP also undertook remedial actions after the conduct on Relevant Day Two, including:
 - ceasing to accept or solicit Orders with discretion on its energy desk wherever possible; and
 - counselling and giving warnings to both Employee 1 and Employee 3.
- ICAP has had no previous contraventions found against it by the MDP regarding non – compliance with the market integrity rules but has had three previous contraventions found against it by the ASX Disciplinary Tribunal regarding non – compliance with the SFE Operating Rules;
- ICAP co-operated with ASIC throughout ASIC's investigation and did not dispute any material facts
- ICAP agreed not to contest the matter, thereby saving time and costs.

Compliance with the Infringement Notice

ICAP may choose not to comply with this infringement notice, but if ICAP does not comply, civil proceedings may be brought against ICAP in relation to the alleged contraventions.

To comply with this infringement notice, ICAP must pay the penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to ICAP; and
- (b) ends 27 days after the day on which the infringement notice is given to ICAP;

unless an application is made for its extension.

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

If ICAP 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 ICAP; and
- (b) 7 days after the notice of refusal is given to ICAP.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of ICAP to the Commonwealth for the alleged contraventions of subsection 798H(1) of the Act is discharged;
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against ICAP for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act;
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against ICAP for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act;
- (d) ICAP is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) ICAP 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 & Investments Commission

Note: Members of the Markets 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.

Dated: 31 March 2015

Appendix – Defined Terms

The terms defined in MIR 1.4.3 have the same meaning when used in this notice, including:

"ASIC" means the Australian Securities and Investments Commission.

"Client" means in relation to a Market Participant, any person, partnership or Corporation on behalf of whom the Market Participant enters, Acquires or Disposes of a Futures Contract or Option Contract, or on whose behalf the Market Participant proposes to enter, Acquire or Dispose of a Futures Contract or Option Contract or from whom the Market Participant accepts instructions to enter, Acquire or Dispose of Futures Contracts or Option Contracts.

"Contract" means a contract entered, Acquired or Disposed of on the Market or capable of being entered, Acquired, or Disposed of on the Market.

"Employee" in relation to a Market Participant includes a Director, employee, officer, agent, Representative, consultant or adviser of that Market Participant, or an independent contractor who acts for or by arrangement with a Market Participant.

"Futures Contract" means a Contract designated as a "Futures Contract" by the Market Operator in the Market Operating Rules.

"Market" means the market operated by the Market Operator under the *Australian Market Licence (Australian Securities Exchange Limited) 2002*.

"Market Operating Rules" means the Operating Rules of the Market.

"Market Operator" means Australian Securities Exchange Limited (ACN 000 943 377).

"Market Participant" means a participant in the Market admitted under the Market Operating Rules.

"Operating Rules" has the meaning given by section 761A of the Corporations Act.

"Order" means an instruction to enter into a Contract, or an instruction to amend or cancel a prior instruction to enter into a Contract.

"Representative" has the meaning given by section 910A of the Corporations Act.

"Trade" and similar expressions means "trade" as defined in section 9 of the Corporations Act.

"Trading Platform" means a facility made available by the Market Operator to Market Participants for the entry of trading messages, the matching of Orders, the advertisement of invitations to Trade and the reporting of transactions.

This notice adopts the following additional definitions of terms:

"Compliance" means the ICAP Compliance team.