

DISCIPLINARY MATTER – Commonwealth Securities Limited

Commonwealth Securities Limited ("CommSec") has paid a penalty of **\$55,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for conduct which resulted in a market for a security not being both fair and orderly.

Background and circumstances

CommSec is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Act") by reason of contravening Rule 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.9.1"), which 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 December 2012 at 10:10:04, CommSec received from a client by Direct Market Access, an Order to buy 10,000 My Net Fone Limited fully paid ordinary shares having ASX code ("MNF") at an 'at-market' price ("Initial Order").
- 2) Immediately prior to the Initial Order, the market for MNF was \$1.005/\$1.18/\$0.94 (buy/sell/last traded price) which included three sell Orders totalling 6,152 MNF at three price levels up to and including \$10.00.
- 3) On receipt, the Initial Order immediately triggered CommSec's automated 'orderly market' filter on its Automated Order Processing system and was diverted to a CommSec DTR ("CommSec DTR") for assessment.
- 4) After assessing the Initial Order, the CommSec DTR next intended to amend the Initial Order's price from 'at-market' to a limit of \$1.01. However, at 10:10:25, the CommSec DTR incorrectly keyed the price as \$101.00 instead of the intended \$1.01 into one of CommSec's trading systems ("Trading System"), and submitted an Order to buy 10,000 MNF at a price of \$101.00 into the ASX Trading Platform ("Relevant Order").
- 5) The Relevant Order immediately traded in part resulting in three Market Transactions for a total of 6,152 MNF up to a price of \$10.00 ("Relevant Transactions"). At 10:10:38, on realising his error, the CommSec DTR deleted the residual part of the Relevant Order.
- 6) The entry into the ASX Trading Platform of the Relevant Order, resulting in the Relevant Transactions, caused the price of MNF to rise from \$0.94 to \$10.00, being a \$9.06 or 964% increase in the price of MNF.
- 7) At 10:11:00, CommSec 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 agreed to cancel only one part of the Relevant Transactions, being the Market Transaction for 2,900 MNF at \$10.00. The residual two parts of the Relevant Transactions, being one Market Transaction for 1,552 MNF at \$1.18 and another for 1,700 MNF at \$1.20, were not cancelled.

By reason of CommSec's entry of the Relevant Order into the ASX Trading Platform on 20 December 2012, the MDP had reasonable grounds to believe that CommSec had contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the 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 Act by reason of contravening MIR 5.9.1, is \$1,000,000.

In accordance with subsection 798K(2) of the Act, the maximum pecuniary penalty that may be payable by CommSec under an infringement notice given for an alleged contravention of 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 Act and therefore the total penalty that CommSec must pay to the Commonwealth, is **\$55,000**.

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 MNF to increase from the last traded price of \$0.94 to \$10.00, being a 964% increase;
- The misconduct was inadvertent on the part of CommSec as the CommSec DTR failed to properly exercise his functions to the requisite high standard when he incorrectly keyed in the price as \$101.00 instead of the intended \$1.01, before submitting the Relevant Order into the ASX Trading Platform;
- The MDP noted in this matter that the CommSec DTR, after keying the Relevant Order into the Trading System, 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 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 a market;
- CommSec did not derive any actual or potential benefit from the breach;

- There was one breach of MIR 5.9.1;
- Upon becoming aware of the breach approximately 13 seconds after the Relevant Order had been entered into the ASX Trading Platform and resulted in the Relevant Transactions, the CommSec DTR cancelled the residual part of the Relevant Order. Approximately another 22 seconds thereafter, in accordance with procedure 3200 of the ASX Operating Rules Procedures at the relevant time, CommSec initially notified the ASX of the Relevant Order and requested cancellation of the Relevant Transactions, however the ASX later advised that it would only cancel one part of the Relevant Transactions, being the Market Transaction for 2,900 MNF at \$10.00;
- CommSec took steps to prevent recurrence of the breach by upgrading its Trading System. This upgrade, in stages through the first half of 2013:
 - added the functionality to amend prices using up and down arrows rather than having to key in the price;
 - resulted in prices being highlighted in the colour red when the price keyed in is more than 10% away from the prevailing last traded price; and
 - introduced price variation warning messages or alerts, being displayed when the price keyed in is more than 10% away from the prevailing last traded price;
- CommSec had two prior contraventions found against it by the MDP for non-compliance with the market integrity rules. In 2012 CommSec was fined \$35,000 by the MDP for breaching MIR 5.9.1 (MDP Infringement Notice MDP02/12 – dated 28 May 2012). Again in 2012, CommSec was fined \$50,000 by the MDP for breaching Rule 5.5.2 of the ASIC Market Integrity Rules (ASX Market) 2010 (MDP Infringement Notice MDP04/12 – dated 24 September 2012). CommSec had also been previously sanctioned by the ASX Disciplinary Tribunal relating to non-compliance with ASX Market Rule 14.1.1 (the predecessor rule to MIR 5.9.1) (ASX Circular 416/08 – dated 21 August 2008);
- The MDP confirmed its position that repeat contraventions in similar or comparable matters would not be viewed favourably;
- CommSec co-operated 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 sub-paragraph 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 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".