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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: D2MX Pty Limited

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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: D2MX Pty Ltd
Level 8
25 Bligh Street
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to D2MX Pty Ltd ACN 113 959 596 ("D2MX") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice D2MX must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$120,000**.

This infringement notice is given on 29 October 2015.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP24330/14.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 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 contravention and penalty

D2MX was a Trading Participant in the Market operated by the ASX 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.

D2MX is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 5.6.3(a) and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.3(a)" and "MIR 5.9.1").

At the relevant time, MIR 5.6.3(a) provided:

"A Trading Participant which uses its system for Automated Order Processing must ensure that the system has in place:

(a) organisational and technical resources, including having appropriate automated filters, filter parameters and processes to record any changes to the filters or filter parameters, to enable Trading Messages to be submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform."

The rule has since been amended to reflect developments in Trading Participants' systems and ASIC's expectations of those systems.

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 Markets Disciplinary Panel ("MDP") was satisfied that:

- 1) On 14 February 2014 at 11:14:42.04, a Direct Market Access ("DMA") client of D2MX ("Client") entered an Order into D2MX's Automated Order Processing ("AOP") system to buy 4,000 BHP CitiFirst GSL Mini Short Warrants having ASX code 'BHPLOX', at a price of \$4.69 per Warrant ("Relevant Order").
- 2) Immediately prior to the entry of the Relevant Order by the Client into D2MX's AOP system, the market for BHPLOX was \$2.68/\$2.70/\$3.03 (Bid/Offer/last traded price).
- 3) The Relevant Order traded in the market for BHPLOX as follows:
 - immediately for 2,500 BHPLOX against the priority Offer at \$2.70. The Bid/Offer/last traded price following this Market Transaction was \$4.69/no Offer/\$2.70 with the remainder of the Relevant Order at the priority Bid of \$4.69 for 1,500 Warrants; and
 - at 11:14:42.08 another Trading Participant entered an Order to sell 1,500 BHPLOX at \$4.69 which traded immediately with the remaining Relevant Order ("Relevant Transaction"). Immediately following, the Bid/Offer/last traded price was \$2.68/\$2.70/\$4.69.
- 4) The Relevant Transaction resulted in a \$2.00 or 74% increase in the price of BHPLOX, based upon the midpoint between the Bid and Offer immediately prior to the entry of the Relevant Order.
- 5) The Relevant Transaction fell within the Extreme Trade Range ("ETR") under procedure 3200 of the ASX Operating Rules Procedures.
- 6) At about 11:16:00, the Client contacted D2MX and advised that the Relevant Order had been entered at an erroneous price.
- 7) At about 11:17:00, D2MX contacted the ASX and requested cancellation of the Relevant Transaction. The ASX subsequently cancelled the Relevant Transaction.

- 8) D2MX received no automated filter alerts or warnings after the Relevant Order was entered into D2MX's AOP system, and before the Relevant Order was submitted into the ASX Trading Platform.
- 9) D2MX subsequently conducted an investigation and determined that 95 DMA clients, including the Client, did not have 'price movement' automated filters applied to their Warrant market Orders from either:
 - the date of inception of the D2MX AOP system, being about August 2011; or
 - the date they became clients of D2MX during the period from August 2011 to 21 March 2014.
- 10) During the period from August 2011 to 21 March 2014, automated filters for the 95 DMA clients were determined by D2MX and D2MX understood the filters would be applied to each client account by way of a daily upload file which was generated by a third party service provider. However, a deficiency in the daily upload file meant that the automated filters were not applied to the 95 DMA client accounts.
- 11) In contrast, other DMA clients of D2MX who traded Warrants through an intermediary did have 'price movement' automated filters in place from August 2011 to 21 March 2014, as the automated filters were applied manually by D2MX.
- 12) Between 18 February 2014 and 21 March 2014, D2MX applied the 'price movement' automated filter to Warrant market Orders placed by the 95 DMA clients.

By reason of D2MX's entry of the Relevant Order into the ASX Trading Platform on 14 February 2014, the MDP has reasonable grounds to believe that D2MX has contravened MIR 5.6.3(a) and MIR 5.9.1 and thereby contravened subsection 798H(1) of the Act in that:

- D2MX failed to have in place organisational and technical resources, including having:
 - 'price movement' automated filters as appropriate, for 95 DMA client accounts between August 2011 to 21 March 2014; and
 - processes to verify that the 'price movement' automated filters were successfully applied to the 95 DMA clients,which interfered with the efficiency and integrity of the Market; and
- D2MX's misconduct resulted in a market not being both fair and orderly as the Relevant Order caused the price of BHPLOX to increase from \$2.69 to \$4.69, representing an increase of about 74%.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order D2MX to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 5.6.3(a), is \$1,000,000;
- by reason of contravening MIR 5.9.1, is \$1,000,000.

Maximum pecuniary penalty under Infringement Notice

The maximum pecuniary penalty that may be payable by D2MX under an infringement notice given pursuant to subsection 798K(2) of the Act:

- by reason of allegedly contravening MIR 5.6.3(a), is \$600,000;
- by reason of allegedly contravening MIR 5.9.1, is \$600,000.

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

- MIR 5.6.3(a) – \$85,000;
- MIR 5.9.1 – \$35,000.

Therefore, the total penalty that the D2MX must pay to the Commonwealth is **\$120,000** being the penalty payable under this infringement notice for the two 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:

- The remedies applied should promote market integrity and confident and informed participation of investors in financial markets;
- MIR 5.6.3(a) is aimed at promoting confidence in the integrity of the market. Ensuring that Trading Participants with AOP systems have in place adequate organisational and technical resources to operate without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform, is critical in maintaining the integrity of the market. This includes having:
 - fully functional appropriate automated filters; and
 - processes to verify that appropriate automated filters are fully functional;
- Appropriate automated filters are essential components of AOP systems used by DMA clients of Trading Participants. Appropriate automated filters are in place to ensure DMA client Orders entered through Trading Participant AOP systems are submitted into the Trading Platform without interfering with market integrity. For this reason, it is incumbent on Trading Participants (and not third parties) to ensure that their AOP systems have fully functional appropriate automated filters in place, and that their AOP systems comply with the market integrity rules. Accordingly, Trading Participants ought to exercise ongoing control over the development, implementation and maintenance of appropriate automated filters for their AOP systems instead of relying on third party service providers or vendors;

- D2MX failed to ensure that at all times its AOP system had in place or had activated appropriate automated filters, and failed to ensure that it had in place processes to verify that appropriate automated filters were in place or had been activated. The failure of D2MX to ensure that its AOP system had these safeguards risked undermining public confidence in the integrity of the market;
- MIR 5.9.1 is similarly 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 also critical in maintaining the integrity of the market;
- The submission of the Relevant Order into the ASX Trading Platform through D2MX's AOP system caused the price of BHPLOX to immediately increase from \$2.69 to \$4.69, representing a significant increase or variability of about 74%, which had the potential to impact the market;
- While there were two alleged breaches of the market integrity rules, being one of MIR 5.6.3(a) and one of MIR 5.9.1, both alleged breaches arose from a single course of conduct;
- The misconduct was of a serious nature as it had the potential to undermine confidence in the integrity of the market;
- The misconduct was careless on the part of D2MX. D2MX neglected to ensure that at all times its AOP system had in place or had activated, appropriate automated filters in relation to the 95 DMA client accounts;
- The misconduct transpired over an unacceptable length of time being a period of approximately 30 months;
- Although the misconduct did not appear to result in any benefit to D2MX or detriment to third parties, the potential to gain benefit or cause detriment was real and apparent;
- While the MDP had regard to D2MX self-reporting the breach of MIR 5.6.3 to ASIC, it also noted that the Relevant Transaction was initially identified by the Client, who then made D2MX aware of it;
- D2MX took immediate action on becoming aware of the Relevant Transaction in accordance with relevant ASX Operating Rules Procedures to facilitate cancellation of it;
- D2MX took steps to prevent recurrence of the breaches, including:
 - immediately instigating an investigation into the cause of the resultant Relevant Transaction;
 - on 18 February 2014, activating the 'price movement' automated filters for Warrant market Orders on the Client's account and three other significant DMA client accounts;

- on 21 March 2014, activating the 'price movement' automated filters for Warrant market Orders on the remaining 91 of the 95 DMA client accounts; and
 - on 21 March 2014, as an additional precaution, introducing a 'general limit' automated filter.
- D2MX had one prior contravention found against it by the MDP in Infringement Notice–MDP 06/14 dated 6 May 2014, relating to both MIR 5.6.3(a) and MIR 5.9.1. The MDP reiterated that any future, repeat contraventions in similar or comparable matters would not be viewed favourably;
 - D2MX co-operated with ASIC throughout its investigation and did not dispute any material facts; and
 - D2MX agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

D2MX may choose not to comply with this infringement notice, but if D2MX does not comply, civil proceedings may be brought against D2MX in relation to the alleged contraventions.

To comply with this infringement notice, D2MX must pay the penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to D2MX; and
- (b) ends 27 days after the day on which the infringement notice is given to D2MX;

unless an application is made for its extension.

D2MX may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If D2MX does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If D2MX 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 D2MX; and
- (b) 7 days after the notice of refusal is given to D2MX.

D2MX may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If D2MX does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to D2MX.

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of D2MX 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 D2MX 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 D2MX 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) D2MX is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) D2MX 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

Dated: 29 October 2015

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.

Appendix – Defined Terms

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

"ASX" means ASX Limited (ACN 008 624 691).

"Automated Order Processing" means the process by which orders are registered in a Trading Participant's system and, if accepted for submission into a Trading Platform by the Trading Participant, submitted as corresponding Trading Messages without being keyed or rekeyed by a DTR.

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

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

"Market Transaction" means a transaction for one or more Products, entered into on a Trading Platform or reported to the Market Operator under the Market Operating Rules.

"Order" relevantly means, in relation to Cash Market Products, an instruction to purchase or sell Cash Market Products, or an instruction to amend or cancel a prior instruction to purchase or sell Cash Market Products.

"Trading Participant" means a Market Participant which has Trading Permission in respect of one or more Products.

"Trading Platform" means a facility made available by the Market Operator to Trading 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:

"Direct Market Access" means an Order submitted by a client of a Trading Participant into the Trading Participant's system and subject to Automated Order Processing.

"ETR" means the range set out in procedure 3200 of the ASX Operating Rules Procedures as defined in rule [7100] of section 7 of the ASX Operating Rules as at 14 February 2014.