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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Credit Suisse Equities (Australia) 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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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**To: Credit Suisse Equities (Australia) Limited
Level 31
Gateway
1 Macquarie Place
SYDNEY NSW 2000**

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Credit Suisse Equities (Australia) Limited ("Credit Suisse") ACN 068 232 708 under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Credit Suisse must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
$74,000

This infringement notice is given on 15 April 2016.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP4696/15.

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. The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 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

Credit Suisse was a Trading Participant in the market operated by 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.

Credit Suisse is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 5.6.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.1") which provides that:

A Trading Participant which uses its system for Automated Order Processing must at all times:

(a) have appropriate automated filters, in relation to Automated Order Processing; and
(b) Ensure that such use does not interfere with:
(i) The efficiency and integrity of the Market;
(ii) The proper functioning of any Trading Platform; or
(iii) The efficiency and integrity of any Crossing System operated by the Trading Participant.

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

1) On 11 December 2014 and until 18 February 2015, inclusive ("Relevant Period"), Credit Suisse started to route 'at market' Orders on its Automated Order Processing ("AOP") system.

2) On 18 February 2015 ("Relevant Day"), Credit Suisse submitted 167 'at market' Orders to buy 1 lot each across a basket of 167 securities ("Basket Order") via its AOP system. Between 15:12:10 and 15:47:21 on the Relevant Day, the Basket Order resulted in the execution of 160 separate 1 lot trades including the following trades ("Relevant Trades") in the respective securities ("Securities") on the ASX Market:

   (a) Trade in 1 lot of the fully paid ordinary shares of Payce Consolidated Limited ("PAY") at $7.90. The market for PAY immediately prior to the entry of this bid was $4.30/$7.90/$5.55 (Bid/Offer/Last). This bid traded immediately with a value of $7.90, and caused the price of PAY to increase by $2.35 or 42.34%. It was the only trade of the day in PAY; and

   (b) Trade in 1 lot of the 1:1 CHESS Depository Interests ("CDIs") in Alcoa Inc ("AAI") at $26.86. The market for AAI immediately prior to the entry of this bid was $21.00/$26.86/$22.40 (Bid/Offer/Last). This bid traded immediately with a value of $26.86, and caused the price of AAI to increase by $4.46 or 19.91%. It was the only trade of the day in AAI.

3) At the time of the Basket Order, and the Relevant Trades which executed ("Relevant Time"), Credit Suisse had in place an AOP system with the following components:

   (a) Smart Order Router Plus ("SOR+") which was initially certified for the ASX Market and the Chi-X Market in March 2013; and

   (b) Low Latency Direct Market Access ("LLDMA") which was initially certified in July 2010 for the ASX Market; and then further certified in May 2012 to add the ASX 24 Market.

   Additionally, at the Relevant Time, Credit Suisse had in place the Global Compliance Engine ("GCE") which is its system of filters, filter parameters and limit checking. The GCE is not a certified AOP system but all Orders entered into the Credit Suisse AOP system are required to pass through the GCE before being entered into the Market.

   On the Relevant Day, the Basket Order passed through the GCE before being routed to the ASX Market via the Credit Suisse AOP system. However, Credit Suisse's GCE 'at market' filter logic ("GCE filter logic"), being the last price tolerance logic for 'at market' orders was using the following sequence to determine both the 'at market' price and the reference price to determine the percentage movement for an order to be assessed:

(a) last traded price (of current day);
(b) opening price (of current day);
(c) closing price (of last day security traded); and
(d) far touch price (i.e.Bid-Offer spread).

4) Credit Suisse's GCE filter logic resulted in inaccurate calculations for the Securities, as these were illiquid. As the Securities had not traded on the Relevant Day, there was no last traded price or opening price for the GCE filter logic to use in establishing a reference price or in its calculation of the 'at market' price. Further, the GCE filter logic did not calculate the far touch price as the 'at market' price was derived from the closing price.

5) By using the above sequence, the 'at market' price in an illiquid security was given the same price as the reference price. This calculation resulted in the GCE filter logic determining that the percentage movement in price, of the 'at market' price from the reference price was 0%, which permitted the Relevant Trades to be entered into the ASX Trading Platform without any pre-trade filter being triggered to alert Credit Suisse that submission into the ASX Market would significantly move the price of the Securities.

6) However, post-trade alerts were immediately generated after the execution of the Relevant Trades, through the SMARTSBroker third party surveillance system. Despite this, Credit Suisse first became aware of the circumstances of the Relevant Trades at approximately 16:30 on the Relevant Day, when it was contacted by ASX Compliance Pty Limited ("ASX Compliance").

7) Credit Suisse contacted ASX Market Control to request cancellation of the Relevant Trades. This request was not granted as it was outside the time limit prescribed under the ASX Operating Rulebook Procedures. ASX also did not deem the transactions invalid as defined under the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, but as acceptable Reference Prices and allowed the Relevant Trades to stand.

8) Credit Suisse immediately disabled the 'at market' Order functionality on its AOP system until an amendment for the GCE filter logic was tested and implemented on 26 February 2015.

By reason of Credit Suisse's entry of the Relevant Trades into the ASX Trading Platform which caused price movements of a 42.34% increase in PAY and a 19.91% increase in AAI respectively, Credit Suisse failed to have in place appropriate automated price filters in relation to the use of its AOP system and failed to ensure that such use did not interfere with the efficiency and integrity of the Market. Accordingly, the MDP has reasonable grounds to believe that Credit Suisse contravened MIR 5.6.1 during the Relevant Period 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 Credit Suisse to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 5.6.1 is $1,000,000.

The maximum pecuniary penalty that may be payable by Credit Suisse under an infringement notice for an alleged contravention of MIR 5.6.1 is $600,000.

Penalty under the Infringement Notice

The penalty payable under infringement notice for the alleged contravention of subsection 798H(1) of the Act and therefore the total penalty that Credit Suisse must pay to the Commonwealth, is **$74,000.**

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

- MIR 5.6.1 is aimed at promoting confidence in the integrity of the Market. Imposing a strict obligation on Trading Participants which use their systems for AOP at all times have appropriate automated filters and ensure that such use does not interfere 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;

- MIR 5.6.1 imposes a mandatory obligation to have appropriate automated filters as indicated by use of the word "must";

- The conduct was inadvertent on the part of Credit Suisse as Credit Suisse conducted testing of 'at market' Orders via its AOP system that included testing of price impact filters and Credit Suisse had a number of filters designed to limit market impact, in addition to the last price tolerance check. This approach is in accordance with ASIC Regulatory Guide 223 – *Competition in Exchange Markets* ("RG 223") as RG 223.18 states that market participant level controls can include testing, price and filters;

- However, such testing did not prevent Credit Suisse from entering the Relevant Trades into the ASX Trading Platform which caused price movements of a 42.34% increase in PAY and a 19.91% increase in AAI respectively, and accordingly, Credit Suisse failed to ensure that at all times its AOP system had in place appropriate automated price filters which did not interfere with the efficiency and integrity of the Market;

- ASIC Regulatory Guide 241 – *Electronic Trading* ("RG 241") states at RG241.33 that "*the requirement to have appropriate automated filters is fundamental to the obligations imposed on market participants under Part 5.6*. (ASIC Market Integrity Rules (ASX Market) 2010)". Further RG 241.34 states that "*Filters and filter parameters are pre-trade controls and the principal means by which trading messages are checked to ensure they will not interfere with the efficiency and integrity of the market or the proper functioning of any trading platform*".

- RG 241.35 then provides guidance that "*Filters establish points at which trading messages are tested and by exception, action other than passing them directly into the market is taken. In practical terms, an automated filter can usually do one of four things in relation to any given trading message…*

(a) *pass the trading message into the market;*
(b) *pass the trading message into the market but identify it as an exception on exception reports;*
(c) *pass the trading message to a designated trading representative for review and a decision as to whether the trading message may be submitted;* or
(d) *reject the trading message outright*".

- Despite this guidance, Credit Suisse's automated price filters did not result in (c) or (d) above which would have been more appropriate, but rather resulted in (a) where the Trading Messages were passed into the ASX Market despite the significant price movements which were caused in PAY and AAI;

- Notwithstanding, the Panel accepts that Credit Suisse's automated price filters were appropriate in respect of liquid securities and not appropriate only in respect of illiquid Securities such as PAY and AAI;

- The breach was an isolated incident but was of a serious nature as the misconduct transpired over a period of two months and it had the potential to undermine public confidence in the Market;

- Credit Suisse failed to detect the breach in a timely manner despite the post-trade SMARTSBroker alerts that were immediately generated after the execution of the Relevant Trades. Credit Suisse only became aware of the breach after being informed by ASX Compliance on the Relevant Day;

- Credit Suisse contacted ASX Market Control to request cancellation of the Relevant Trades. This request was not granted as it was outside the time limit prescribed under the ASX Operating Rulebook Procedures. ASX also did not deem the transactions invalid as defined under the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, but as acceptable Reference Prices and allowed the Relevant Trades to stand;

- Credit Suisse took steps to prevent recurrence of the breach by immediately disabling 'at market' Order functionality via its AOP system until an amendment for the GCE filter logic was tested and implemented on 26 February 2015;

- Credit Suisse did not derive any actual or potential benefit, as a result of the misconduct;

- Credit Suisse has three prior contraventions found against it by the MDP for non-compliance with the market integrity rules including a previous contravention of MIR 5.6.1 – MDPIN05/12 – for which Credit Suisse paid a pecuniary penalty of $52,000 and a similar contravention of MIR 5.6.3(a) – MDPIN03/13 dated 29 August 2012 – for which Credit Suisse paid a pecuniary penalty of $95,000. Credit Suisse has previously been sanctioned by the ASX Disciplinary Tribunal on six occasions since 2003. Two of these previous matters involved AOP contraventions. The MDP notes that repeat contraventions in similar or comparable matters will not be viewed favourably;

- Credit Suisse cooperated with ASIC throughout its investigation and did not dispute any material facts; and

- Credit Suisse agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

(a) starts on the day on which the infringement notice is given to Credit Suisse; and

(b) ends 27 days after the day on which the infringement notice is given to Credit Suisse,

unless an application is made for its extension.

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

If Credit Suisse applies for a further period of time in which to comply with this infringement 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 Credit Suisse; and

(b) 7 days after the notice of refusal is given to Credit Suisse.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

(a) any liability of Credit Suisse to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged;

(b) no civil or criminal proceedings may be brought or continued by the Commonwealth against Credit Suisse for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention 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 Credit Suisse for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act;

(d) Credit Suisse is not taken to have admitted guilt or liability in relation to the alleged contravention; and

(e) Credit Suisse 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: 15 April 2016

Appendix – Defined Terms

The terms defined in MIR 1.4.3 (ASX Market) 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:
(a) In relation to Cash Market Products, an instruction to purchase or sell Cash Market Products...

"Product" means a Cash Market Product or a Derivatives Markets Contract, as applicable.

"Trading Messages" means those messages submitted into a Trading Platform relating to reading functions, such as Orders, amendment or cancellation of Orders and the reporting or cancellation of Market Transactions on the Trading Platform.

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

"Trading Permission" means the right to submit Trading Messages in a Trading Platform.

"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.

The terms defined in MIR 1.4.3 (Competition in Exchange Markets) have the same meaning when used in this notice, including:

"Invalid" means in relation to a price established by an auction, or the price of a Transaction, means:

(a) the price has resulted from an error;
(b) the price is materially different from the price of the last Transaction in the same Equity Market Product, CGS Depository Interest, Equity Index Future or ASX SPI 200 Future on the same Order Book, and the difference in price is not, in the opinion of the Market Operator, readily attributable to an announcement that has been made to the Market or some other event; or
(c) the price has resulted from a transaction that is otherwise required to be cancelled or amended by the Market Operator of the Market on which the Transaction is executed.

This notice adopts the following additional definitions of terms:

"GCE Filter Logic" means Global Compliance Engine Filter Logic.

"SMARTSBroker" means SMARTS.broker software provided by SMARTS Broker Compliance Pty Ltd and used by Credit Suisse to conduct post- trading analysis.