

DISCIPLINARY MATTER – Macquarie Securities (Australia) Limited

Macquarie Securities (Australia) Limited ("Macquarie Securities") has paid a total penalty of **\$120,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for Macquarie Securities:

- failing to prevent the entry into the Chi-X Trading Platform of an erroneous Order which resulted in a market for an Equity Market Product not being both fair and orderly, on two separate occasions; and
- failing to have in place appropriate automated filters to take account of a multi-market structure of competing exchange markets so as to ensure that use of the Automated Order Processing system did not interfere with the efficiency and integrity of the Chi-X Market.

Background and circumstances

Macquarie Securities was alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Corporations Act") by reason of contravening Rules 5.9.1 and 5.6.1 of the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 ("MIR 5.9.1" and "MIR 5.6.1").

MIR 5.9.1 provides:

"A Market Participant must not do anything which results in a market for an Equity Market Product not being both fair and orderly, or fail to do anything where that failure has that effect".

MIR 5.6.1 relevantly provides:

"(1) A Market 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 Chi-X Market;*
 - (ii) the proper functioning of any Trading Platform; or...."*

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

- 1) During the period from 20 August 2014 and 21 November 2014, a client of Macquarie Securities ("Client") elected to preference its Order execution venue through Macquarie Securities direct market access automated order processing system ("DMA2 AOP").
- 2) In the period 1 September 2014 to 20 October 2014 ("Relevant Period"):
 - a. during the ASX Market Pre-Open or Pre-CSPA Session States, DMA2 AOP vetted Orders received from the Client destined for the Chi-X Market (which was in Open

Session State) against the ASX Market last traded price or ASX Market Indicative Auction Price ("IAP") if one existed; and

- b. during the ASX Market Open Session State, DMA2 AOP vetted Orders received from the Client destined for the Chi-X Market against the ASX last traded price or NBBO.
- 3) The DMA2 AOP filter parameters used to vet Orders during the ASX Market Open Session State were tighter than those applied during the ASX Market Pre-Open or Pre-CSPA Session State. Therefore, during the ASX Market Pre-Open or Pre-CSPA Session States, regardless of execution venue, Orders were vetted against the wider ASX Market Pre-Open/Pre-CSPA filter parameters even when the Chi-X Market was in an Open State Session.

Contravention 1 – MIR 5.9.1 – creating a market for QUR that was not fair and orderly

- 4) On 1 September 2014 a Macquarie Securities DTR ("Macquarie Securities DTR"), despite receiving automated order processing ("AOP") filter alerts, submitted an Order on behalf of the Client to buy 10,000 shares in Quantum Resources Limited, having ASX Market Code QUR ("QUR") on the Chi-X Market at \$0.02 ("Relevant QUR Order").
- 5) Immediately prior to Macquarie Securities receiving the Relevant QUR Order the Bid/Offer/last traded price for QUR:
 - a. on the Chi-X Market was no Bid/no Offer/\$0.003; and
 - b. on the ASX Market was \$0.004/\$0.002/\$0.003.
- 6) Macquarie Securities' level two and level three DMA2 AOP soft filter parameters were both set to the same percentage of greater than 100%. Had the Relevant QUR Order been greater than 1000% from the last traded price or the ASX Market IAP, Macquarie Securities' level 4 DMA2 AOP hard filter would have rejected the Order outright without referring it to a DTR for review.
- 7) Had Macquarie Securities vetted the Relevant QUR Order against its tighter Open Session State filter parameters, which would have been appropriate given the Chi-X Market was open for trading, Macquarie's level 4 DMA2 AOP hard filter would have rejected the Order outright for being greater than 200% from the last traded price without referring it to a DTR for review.
- 8) The Macquarie Securities DTR submitted the Relevant QUR Order into the Chi-X Market at approximately 10:01:00 when no Offer existed on the Chi-X Market.
- 9) Immediately prior to the Macquarie Securities DTR submitting the Relevant QUR Order:
 - a. the Bid/Offer/last traded price for QUR on the Chi-X Market was \$0.009/no Offer/\$0.003;
 - b. the Bid/Offer/last traded price for QUR on the ASX Market was \$0.004/\$0.002/\$0.003;
 - c. the IAP for QUR was \$0.003
 - d. the highest priority Bid for QUR on the Chi-X Market was \$0.009.
- 10) The Relevant QUR Order was the highest priority Bid in QUR on a consolidated markets basis for approximately one hour. At approximately 11:02:37 an opposing sell Order was placed by a Market Participant for 12,765 QUR at \$0.02 ("QUR Sell Order"). This resulted in a Market Transaction for 10,000 QUR at \$0.02 on the Chi-X Market

("Relevant QUR Trade"), causing a price increase of 567% from the last traded price of QUR on both the Chi-X and ASX Markets.

- 11) By reason of Macquarie Securities' entry of the Relevant QUR Order into the Chi-X Market on 1 September 2014, the MDP had reasonable grounds to believe that Macquarie Securities had contravened MIR 5.9.1 and thereby contravened subsection 798H(1) in that Macquarie Securities created a market for QUR that was not fair and orderly.

Contravention 2 – MIR 5.9.1 – creating a market for NVG that was not fair and orderly

- 12) On 1 September 2014 the Macquarie Securities DTR, despite receiving AOP filter alerts, submitted an Order on behalf of the Client to buy 10,000 shares in Navaho Gold Limited, having ASX Market Code NVG ("NVG") on the Chi-X Market at \$0.02 ("Relevant NVG Order").
- 13) Immediately prior to Macquarie Securities receiving the Relevant NVG Order the Bid/Offer/ last traded price for NVG:
 - a. on the Chi-X Market was no Bid/no Offer/\$0.003; and
 - b. on the ASX Market was \$0.003/\$0.004/\$0.003.
- 14) Macquarie Securities' level two and level three DMA2 AOP soft filter parameters were both set to the same percentage of greater than 100%. Had the Relevant NVG Order been greater than 1000% from the last traded price or the ASX Market IAP, Macquarie Securities' level 4 DMA2 AOP hard filter would have rejected the Order outright without referring it to a DTR for review.
- 15) Had Macquarie Securities vetted the Relevant NVG Order against its tighter Open Session State filter parameters, which would have been appropriate given the Chi-X Market was open for trading, Macquarie's level 4 DMA2 AOP hard filter would have rejected the Order outright for being greater than 200% from the last traded price without referring it to a DTR for review.
- 16) The Macquarie Securities DTR submitted the Relevant NVG Order into the Chi-X Market at approximately 10:01:43 when no Offer existed on the Chi-X Market.
- 17) Immediately prior to the DTR submitting the Relevant NVG Order, the Bid/Offer/last traded price for NVG on the Chi-X Market was \$0.002/no Offer/\$0.003.
- 18) The Relevant NVG Order was the highest priority Bid in NVG on the Chi-X Market for approximately two hours. At approximately 12:04:53, an opposing sell Order was placed by a Market Participant for 100,000 NVG at \$0.02 ("NVG Sell Order"). This resulted in a Market Transaction for 100,000 NVG at \$0.02 on the Chi-X Market ("Relevant NVG Trade"), causing a price increase of 567% from the last traded price of NVG on the Chi-X and ASX Markets.
- 19) By reason of Macquarie Securities' entry of the Relevant NVG Order into the Chi-X Market on 1 September 2014, the MDP had reasonable grounds to believe that Macquarie Securities had contravened MIR 5.9.1 and thereby contravened subsection 798H(1) in that Macquarie Securities created a market for NVG that was not fair and orderly.

Contravention 3 – MIR 5.6.1 – failure to have appropriate automated filters

- 20) As a result of Macquarie Securities' AOP filter settings during the Relevant Period, in addition to the Relevant QUR Order and the Relevant NVG Order, the following Orders were also submitted into the Chi-X Market resulting in additional Market Transactions

for Equity Market Products that were also substantially away from their respective prevailing market prices:

a. At 16:02:38 on 5 September 2014, Macquarie Securities received an Order from the Client to sell 200 shares in Telstra Corporation Limited, having ASX Market Code TLS, ("TLS") on the Chi-X Market at \$5.20 ("Relevant TLS Order"). This resulted in a Market Transaction that was \$0.45 or 7.96% below the last traded price of TLS at \$5.65 and 7.8% below the IAP of \$5.64, and set the low in TLS for the months from September to December 2014. At 16:10:03 the ASX Market for TLS went into CSPA Session State resulting in 148 Market Transactions at \$5.64.

b. At 16:04:27 on 20 October 2014, Macquarie Securities received an Order from the Client to buy 200 shares in Santos Limited, having ASX Market Code STO ("STO") on the Chi-X Market at \$14.01 ("Relevant STO Order"). This resulted in a Market Transaction that was 9.97% from the last traded price of \$12.74 and 10.05% above the IAP, and set the high in the STO for the day on 20 October 2014 and the high for the months from October to December 2014. At 16:10:26, the ASX Market for STO went into CSPA Session State resulting in 139 Market Transactions at \$12.73.

- 21) Had Macquarie Securities DMA2 AOP vetted the Relevant TLS and STO Orders against its tighter Open Session State AOP filter parameters, which would have been appropriate given the Chi-X Market was open for trading, the Orders would have triggered a filter alert for the Orders being greater than 7% from the last traded price.
- 22) Macquarie Securities did not receive any AOP alerts with respect to the Relevant TLS or STO Orders as its AOP filter parameters were configured to generate an alert referring it to a DTR for review if the price of an Order was greater than 10% away from the last traded price in the relevant security or greater than 12% away from the IAP.
- 23) By reason of Macquarie Securities' entry into the Chi-X Market of: the Relevant QUR Order on 1 September 2014; the Relevant NVG Order on 1 September 2014; the Relevant TLS Order on 5 September 2014; and the Relevant STO Order on 20 October 2014, the MDP had reasonable grounds to believe that Macquarie Securities had contravened MIR 5.6.1 and thereby contravened subsection 798H(1) of the Act by failing to have in place appropriate automated price filters in a multi-market structure of competing exchange markets to ensure that Orders submitted onto the Chi-X Market via its DMA2 AOP during the ASX Market Pre-Open or Pre-CSPA Session State and where no Bid or Offer existed, did not interfere with the efficiency and integrity of the market for certain Equity Market Products trading on the Chi-X Market.

Maximum pecuniary penalty that a Court could order

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

- by reason of contravening MIR 5.9.1 is \$1,000,000;
- by reason of contravening MIR 5.6.1 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 Macquarie Securities under an infringement notice given for contravening subsection 798H(1) of the Corporations Act:

- by reason of allegedly contravening MIR 5.9.1, is \$600,000;
- by reason of allegedly contravening MIR 5.6.1, is \$600,000.

Penalty under the Infringement Notice

The total penalty payable under the infringement notice for the three alleged contraventions of subsection 798H(1) of the Corporations Act and therefore the penalty that Macquarie Securities paid to the Commonwealth, was **\$120,000** comprised as follows:

- Contravention 1 – MIR 5.9.1 – \$30,000;
- Contravention 2 – MIR 5.9.1 – \$30,000;
- Contravention 3 – MIR 5.6.1 – \$60,000.

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, and upholding, the integrity of the market. Imposing a strict obligation on Market Participants not to do anything which results in a market for an Equity Market Product not being both fair and orderly, is also critical in maintaining the integrity of the market;
- MIR 5.6.1 is aimed at promoting confidence in the integrity of the Chi-X Market. Imposing a strict obligation on Market Participants which use their systems for AOP to at all times have appropriate automated filters and ensure that such use does not interfere with the efficiency and integrity of the Chi-X Market or the proper functioning of the Trading Platform, is critical in maintaining the integrity of the Chi-X Market;
- Appropriate automated filters are essential components of AOP systems used by DMA clients of Market Participants. Appropriate automated filters are in place to ensure Orders are submitted into the Trading Platform without interfering with the efficiency and integrity of the Chi-X Market or the proper functioning of the Trading Platform;
- The Panel considers it crucial for Market Participants, when setting up AOP systems for a multi-market environment, to have specialised filters capable of dealing with the submission of Orders into competing exchange markets;
- Macquarie Securities failed to ensure that at all times its AOP system had in place appropriate automated price filters in a multi-market structure of competing exchange markets. This failure had the potential to undermine public confidence in the integrity of the market;
- The contraventions had the potential to damage the reputation and integrity of the Chi-X Market and the market generally as:
 - the submission of the Relevant QUR Order into the Chi-X Market caused the price of QUR to increase \$0.017 or 567% from the last traded price on the Chi-X and ASX Markets;
 - the submission of the Relevant NVG Order into the Chi-X Market caused the price of NVG to increase \$0.017 or 567% from the last traded price on the Chi-X and ASX Markets;
 - the Relevant TLS Order resulted in a Market Transaction that was \$0.45 or 7.96% below the last traded price of TLS at \$5.65 and 7.8% below the IAP of \$5.64, and set the low in TLS for the months from September to December 2014; and
 - the Relevant STO Order resulted in a Market Transaction that was \$1.27 or 9.97% above the last traded price of \$12.74 and 10.05% above the IAP, and set the high in

STO for the day on 20 October 2014 and the high for the months from October to December 2014;

- Given the market prominence of TLS and STO within the ASX and Chi-X Markets, the contraventions had the potential to cause widespread detriment and impact public confidence. Macquarie Securities' filter parameters that were configured to generate an alert if the price of an Order for either TLS or STO was greater than 10% away from the last traded price or greater than 12% away from the IAP should have been set lower given the potential of the TLS and STO Orders to set the highs and lows in the respective products each day;
- Macquarie Securities' level 4 DMA2 AOP filter parameters which would have rejected Orders for QUR or NVG outright without referring them to a DTR for review if the prices for either QUR or NVG were greater than 1000% from the last traded price or the ASX Market IAP should have been set at a level that was appropriate for such Equity Market Products;
- The conduct resulting in each contravention was negligent on the part of Macquarie Securities as:
 - the functions of the Macquarie Securities DTR were not exercised to the requisite high standard when the Macquarie Securities DTR did not take due care in assessing the Relevant QUR and NVG Orders after receiving the AOP filter alerts and before submitting the Relevant QUR and NVG Orders into the Chi-X Market. An important aspect of the role of a DTR, as an internal control, is to take proper care and pay proper attention and diligence in the consideration of pre-trade alerts or warnings especially in circumstances where the alert triggered is in relation to an Order received through an AOP system via DMA. Taking care and paying attention and diligence to prevent the entry of Orders into the Trading Platform that could result in a market for an Equity Product that is not both fair and orderly, is a critical measure in maintaining the integrity of a market; and
 - Macquarie Securities' AOP system failed to have appropriate filters in a multi-market structure of competing exchange markets, in which different venues may be in different trading session states at a given time, to prevent the Relevant QUR, NVG, TLS and STO Orders being submitted to the Trading Platform and subsequently trading;
- Macquarie Securities did not receive any post-trade alerts. In respect of the Relevant TLS and STO Orders, Macquarie did not receive post-trade alerts because at the time the Orders were submitted, Macquarie Securities did not have a trade-to-trade price alert activated in its surveillance system. In the Panel's view, it is not acceptable that post-trade alerts were not generated in respect of each the Relevant QUR, NVG, TLS and STO Orders, particularly when an AOP system has rejected an Order, as was the case in respect of the QUR and NVG Relevant Orders;
- Macquarie Securities did not attempt to cancel the Relevant QUR, NVG, TLS and STO Trades;
- There were three contraventions, being two separate failures to comply with MIR 5.9.1 and one failure to comply with MIR 5.6.1;
- The contraventions did not arise from a single course of conduct;
- The contraventions occurred over a significant length of time, being almost 2 months;
- Macquarie Securities did not gain any benefit as a result of the contraventions;

- Macquarie Securities did not self-report the failure to comply with the market integrity rules concerned to ASIC;
- Macquarie Securities took steps to prevent recurrence of the contraventions concerned, including:
 - implementing a change to its AOP filters on 21 October 2014 that prevented the Client from determining its order execution venue, regardless of the session state of the ASX or Chi-X Markets;
 - implementing a change to its AOP filters on 24 October 2014 that prevented the Client from trading during the ASX Market Pre-Open or Pre-CSPA Session States;
 - terminating its relationship with the Client on 21 November 2014;
 - implementing changes to the DMA2 AOP system in April 2015 to prevent clients routing Orders directly to Chi-X during the ASX Market Auction period; and
 - implementing changes to the information included in the alerts received by its DTRs when an AOP soft filter alert is triggered so that it now identifies the market to which the Order is directed in order to assist the DTRs to assess the appropriateness of the Order for submission into the relevant market;
- Macquarie Securities had one prior contravention found against it by the MDP for non-compliance with the market integrity rules;
- Macquarie Securities had previously been sanctioned by the ASX Disciplinary Tribunal on three separate occasions since 2009 – one regarding the predecessor rule to MIR 5.9.1 (ASX Circular 212/10 dated 17 June 2010);
- Macquarie Securities co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Macquarie Securities agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended by ASIC.

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, Macquarie Securities has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Macquarie Securities is not taken to have contravened subsection 798H(1) of the Corporations 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".