7 September 2016 **MDP CIRCULAR 2016–07**

DISCIPLINARY MATTER – Morgan Stanley Australia Securities Limited

Morgan Stanley Australia Securities Limited ("Morgan Stanley") has paid a total penalty of **$123,750** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for Morgan Stanley allegedly failing to comply with a number of account reconciliation rules in relation to client monies.

Background and circumstances

Morgan Stanley was alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 2.3.3(1), (2), (3)(f), (3)(g) and (4), Rule 2.3.5 and Rule 2.3.2(2) of the ASIC Market Integrity Rules (ASX 24 Market) 2011.

On the evidence before it, the MDP was satisfied that Morgan Stanley failed to :

(a) perform its monthly reconciliation for November 2014 ("Contravention 1");

(b) provide ASIC with a total of 21 monthly reconciliations for the months September 2013 to May 2015 ("Contraventions 2 to 22");

(c) provide an explanation of the reason for a Variation to its New Zealand Dollar June 2014 monthly reconciliation ("Contravention 23");

(d) provide an explanation why the movement in Total Futures Client Monies was more than 20% from the last business day of the prior month for the February and March 2015 monthly reconciliations ("Contraventions 24 and 25");

(e) provide the required statement signed by a director in respect of the September 2013, July 2014, September 2014 and December 2014 monthly reconciliations ("Contraventions 26 to 29");

(f) prepare and give to ASIC annual declarations in relation to its 2013 and 2014 financial years ("Contraventions 30 and 31"); and

(g) provide accurate prior date balances in its daily reconciliation for 28 March 2014 and provide explanations in its daily reconciliations for 6 May 2014, 17 October 2014 and 8 December 2014 as to why Total Futures Client Monies was greater than 20% from the prior day ("Contraventions 32 to 35").

Penalty under the Infringement Notice

The maximum pecuniary penalty that may be payable by Morgan Stanley under an infringement notice given pursuant to subsection 798K(2) of the Act for each alleged contravention of the particular Rules is $600,000.

To ensure the final penalty was just and appropriate and not excessive, having regard to the totality of the conduct, and other relevant factors, including Morgan Stanley's exemplary compliance record to date in addition to its self-reporting to, and significant co-operation with, ASIC, the penalties specified by the MDP for each of the alleged contraventions were:

- Contravention 1 – MIR 2.3.3(1) – $20,000
- Contraventions 2 to 22 - MIR 2.3.3(2) – $1,250 x 21 = $26,250
- Contravention 23 - MIR 2.3.3(3)(f) – $2,500
- Contraventions 24 and 25 - MIR 2.3.3(3)(g) – $2,500 x 2 = $5,000
- Contraventions 26 to 29 – MIR 2.3.3(4) – $2,500 x 4 = $10,000
- Contraventions 30 and 31 - MIR 2.3.5 – $25,000 x 2 = $50,000
- Contraventions 32 to 35 – MIR 2.3.2(2) – $2,500 x 4 = $10,000

Therefore the total penalty specified by the MDP is **$123,750.**

In determining this matter and the appropriate 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:

1) The identification of 35 alleged contraventions occurring over various periods of time relating to Morgan Stanley's accounting procedures indicates that Morgan Stanley's operations team and the compliance controls were not adequate to ensure full compliance with the market integrity rules. The importance of effective internal accounting procedures and continual monitoring of such procedures are crucial to both the business of participants and to maintaining the integrity of the market.
2) Morgan Stanley detected the majority of the contraventions and self-reported to ASIC the failures to comply with the market integrity rules . None of the misconduct giving rise to the alleged contraventions involved dishonesty. Morgan Stanley did not attempt to conceal any of the misconduct. None of the misconduct resulted in any actual benefit accruing to Morgan Stanley or any actual detriment to Morgan Stanley's clients or other market participants. Client monies held by Morgan Stanley were appropriately segregated and reconciled at all times.
3) Morgan Stanley has had no prior contraventions found against it by the MDP for non-compliance with the market integrity rules, and undertook significant steps to prevent recurrence of the alleged contraventions concerned.

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*.

Additional regulatory information

Morgan Stanley has complied with the infringement notice. Such compliance is not an admission of guilt or liability, and Morgan Stanley 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”.