

DISCIPLINARY MATTER – Commonwealth Securities Limited

Commonwealth Securities Limited (“CommSec”) has paid a penalty of **\$200,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel (“MDP”).

The penalty was for CommSec allegedly entering into market transactions for a deceased client, and allocating the market transaction to the deceased client’s accounts, without instructions of the client, and for allegedly not having appropriate supervisory policies and procedures to ensure compliance with the market integrity rules.

Background and circumstances

The MDP had reasonable grounds to believe that CommSec contravened subsection 798H(1) of the Corporations Act by reason of contravening rules 2.1.3, 3.3.1(b) and 3.3.1(c) of the ASIC Market Integrity Rules (ASX Market) 2010.

Rule 2.1.3 generally requires a market participant to have appropriate supervisory policies and procedures to ensure compliance with the market integrity rules.

Rule 3.3.1 generally prohibits a market participant from entering into a market transaction for a client, and from allocating a market transaction to a client’s account, except in accordance with the instructions of the client or of a person authorised by the client.

No instructions from client

On 25 March 2014, CommSec received formal notification of the death of one of its clients, who held two accounts with CommSec — an equities account and a margin loan account. At that time, CommSec failed to apply a holder record lock to either of the accounts.

Between 25 March 2014 and 14 October 2014, CommSec entered into 59 market transactions on behalf of the deceased client on the instructions of a family member of the deceased client through CommSec’s online trading portal. Although the family member was authorised in relation to trading on the margin loan account in the event of a margin call, the family member was not authorised to provide instructions to enter into any of the market transactions. CommSec allocated the market transactions to the deceased client’s accounts.

The MDP was satisfied that CommSec entered into the market transactions for the deceased client, and allocated them to the deceased client’s accounts, without the instructions of the deceased client or of a person authorised by the deceased client.

Inadequate supervisory policies and procedures

During the relevant period, CommSec's deceased estate area were in the process of undergoing an internal restructure. In October 2014, CommSec became aware that the restructure had resulted in a backlog of deceased estate work involving failures to apply holder record locks to a number of accounts of deceased clients, including the deceased client.

The MDP was satisfied that, although CommSec had written deceased estate policies and procedures designed to prevent unauthorised trading on deceased client accounts, they were not properly implemented and integrated into the business or appropriately monitored.

Penalty under the Infringement Notice

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

To ensure the total penalty was just and appropriate and not excessive, having regard to the totality of the conduct, and other relevant factors, including CommSec's self-reporting to, and significant co-operation with, ASIC, the penalties specified by the MDP for each of the alleged contraventions were:

- Contravention 1 – Rule 2.1.3 – \$153,000
- Contravention 2 – Rule 3.3.1(b) – \$23,500
- Contravention 3 – Rule 3.3.1(c) – \$23,500

Therefore the total penalty specified by the MDP is **\$200,000**.

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 MDP was concerned about CommSec's apparent failure to address the implications of the internal restructure on the relevant supervisory policies and procedures supporting the critical back office functions for the management of deceased estates;
- 2) once CommSec became aware of the shortcomings in the implementation of the supervisory policies and procedures, CommSec promptly undertook steps to prevent any recurrence of the alleged contraventions including reviewing its supervisory policies and procedures, introducing regular compliance and risk reviews, introducing additional controls to ensure deceased estate accounts are actioned appropriately on a timely basis, allocating extra resources to finalise the backlog of deceased estate client accounts, and instigating training and education programs for staff;
- 3) the conduct did not appear to have caused loss but nonetheless the potential to cause loss was real and apparent given a number of deceased client accounts were left at risk of unauthorised trading during the relevant period;
- 4) this was the seventh occasion on which the MDP had reasonable grounds to believe that CommSec had not complied with the market integrity rules. The MDP emphasises that any repeat contraventions in similar or comparable circumstances will not be viewed

favourably, and in accordance with Section E of RG 216, may result in substantially higher pecuniary penalties.

The Markets Disciplinary Panel

The MDP is a peer review panel 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

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 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”.