



ASIC

Australian Securities &
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Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: UBS Securities 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*.

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: UBS Securities Australia Limited ACN 008 586 481
Level 16, 2 Chifley Square
Sydney NSW 2000

Matter: MDP 806/16
Date given: 17 May 2017

TAKE NOTICE: The Australian Securities and Investments Commission (“ASIC”) gives this infringement notice to UBS Securities Australia Limited (“UBS”) under regulation 7.2A.04 of the Corporations Regulations 2001 (“Regulations”).

To comply with this notice UBS must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$140,000**.

Unless a contrary intention appears, capitalised terms used in this notice have the same meaning as those defined in Rule 1.4.3 of the following market integrity rules as in force at the time of the conduct:

- ASIC Market Integrity Rules (ASX Market) 2010;
- ASIC Market Integrity Rules (Chi-X Australia Market) 2011; and
- ASIC Market Integrity Rules (Competition in Exchange Markets) 2011.

These market integrity rules are respectively referred to as the ASX Rules, the Chi-X Rules and the Competition Rules.

Details of the alleged contraventions

1. UBS was a Market Participant and Trading Participant in the markets operated by ASX Limited and Chi-X Australia Pty Ltd (“ASX Market” and “Chi-X Market”, respectively) at all relevant times and was required by subsection 798H(1) of the *Corporations Act 2001* (“the Act”) to comply with the ASX Rules, the Chi-X Rules and the Competition Rules.
2. ASX and Chi-X Rule 3.4.1 provided:
 - (1) Subject to Rule 3.4.3, a Market Participant must give a confirmation to a person (the “**Client**”) in respect of each Market Transaction entered into on the Client’s instructions ...

3. ASX and Chi-X Rule 3.4.1(3) sets out the information that must be included in a confirmation, including any disclosure required by ASX and Chi-X Rule 3.2.3.
4. ASX and Chi-X Rule 3.2.3 provided:

When a Market Participant enters into a Market Transaction with a person (the “**Client**”) as Principal, the confirmation issued by the Market Participant to the Client under Rule 3.4.1 in respect of that Market Transaction must state that the Market Participant entered into the transaction as Principal and not as agent.
5. ASX and Chi-X Rule 3.4.3 provided:
 - (1) A Market Participant is not required to comply with Rule 3.4.1 in respect of a client that is not a Retail Client, provided the Market Participant: ...
 - (b) ... notifies the client as soon as practicable:
 - (i) if the Market Participant entered into the client’s Market Transaction as Principal that the Market Participant entered into the Market Transaction as Principal; and
 - (ii) if the client’s Market Transaction was executed as a Crossing, the execution code of the execution venue for the Crossing.
6. ASX and Chi-X Rule 1.4.3 defines a “Crossing” to mean:

a transaction in respect of which a Trading Participant [/Market Participant] acts:

 - (a) on behalf of both buying and selling clients to that transaction; or
 - (b) on behalf of a buying or selling client on one side of that transaction and as Principal on the other side.
7. Competition Rule 5A.2.1 provided:
 - (1) A Participant must provide Regulatory Data to a Market Operator in an Order transmitted to an Order Book of that Market Operator.
 - (2) A Participant must provide Regulatory Data to a Market Operator in a Trade Report made to that Market Operator, for each side of the Transaction for which the Participant acted as agent on behalf of a client, or as principal ...
8. Competition Rule 5A.2.3 defines “Regulatory Data”, and it includes a notation to identify whether the Participant, in relation to the Order or Transaction, is acting as Principal, as agent for a client or as both Principal and agent for a client.

Confirmations

Execution venue

9. The Markets Disciplinary Panel (“MDP”) has reasonable grounds to believe that UBS contravened ASX and Chi-X Rule 3.4.1 and thereby contravened subsection 798H(1) of the Act in respect of the following conduct:
 - (a) between 28 October 2014 and 22 December 2015, UBS gave a total of 171,021

confirmations relating to Crossings to a total of 22 Wholesale Clients that recorded the execution venue code as being 'AX' (the code for the ASX Market). These Crossings were not executed on the ASX Market. Each was executed on UBS' Crossing Systems, which are an automated service that matches buy and sell Orders electronically without first routing the Orders to an exchange or market which displays a public quote (a kind of "dark pool");

- (b) as a result of specifying the incorrect execution venue for the Crossings, UBS failed to satisfy the terms of ASX and Chi-X Rule 3.4.3 that would otherwise have relieved it from the obligation to comply with ASX and Chi-X Rule 3.4.1;
 - (c) UBS was not purporting to comply with ASX and Chi-X Rule 3.4.1 (including as to the information requirements), and failed to comply with those Rules, in relation to confirmations given in relation to:
 - (i) 168,991 Crossings executed on behalf of 22 Wholesale Clients and reported to the operator of the Chi-X Market; and
 - (ii) 2,030 Crossings executed on behalf of 7 Wholesale Clients and reported to the operator of the ASX Market.
10. As ASX and Chi-X Rule 3.4.1 apply in relation to each Market Transaction, the MDP has reasonable grounds to believe that UBS contravened subsection 798H(1) of the Act on 171,021 occasions by reason of contravening Chi-X Rule 3.4.1 on 168,991 occasions and by reason of contravening ASX Rule 3.4.1 on 2,030 occasions.
11. The penalties payable in relation to the alleged contraventions are as follows:
- (a) in relation to the alleged contraventions of subsection 798H(1) of the Act by reason of contravening ASX Rule 3.4.1—the penalty payable is \$17,500 for one of those contraventions, and the penalty payable for the remainder is nil; and
 - (b) in relation to the alleged contraventions of subsection 798H(1) of the Act by reason of contravening Chi-X Rule 3.4.1—the penalty payable is \$17,500 for one of those contraventions, and the penalty payable for the remainder is nil.
12. The apportionment of the \$35,000 penalty for the alleged contraventions of ASX and Chi-X Rule 3.4.1 in relation to incorrect disclosures of execution venue into \$17,500 (ASX Rule 3.4.1) and \$17,500 (Chi-X Rule) was an apportionment determined after taking into account that the same course of conduct gave rise to the alleged contraventions of the same rule in the ASX Rules and the Chi-X Rules.
13. The MDP accepts that the cause of the issue was a system deficiency in UBS' trading system known as "Opera" in the evaluation of execution venue information sent to it by UBS' order management system.

Trading as Principal

14. The MDP has reasonable grounds to believe that UBS contravened ASX and Chi-X Rule 3.4.1 and thereby contravened subsection 798H(1) of the Act in respect of

the following conduct:

- (a) between 1 August 2015 and 31 May 2016 UBS gave a total of 13,703 confirmations to a total of 123 Wholesale Clients that failed to correctly disclose that UBS had acted as Principal when it entered into Market Transactions as counterparty to those Wholesale Clients;
 - (b) as a result of failing to disclose that it had acted as Principal, UBS failed to satisfy the terms of ASX and Chi-X Rule 3.4.3 that would otherwise have relieved it from the obligation to comply with ASX and Chi-X Rule 3.4.1;
 - (c) UBS failed to comply with ASX and Chi-X Rule 3.4.1 in that it failed to disclose that UBS had acted as Principal in confirmations given in relation to:
 - (i) 12,264 Market Transactions for 75 Wholesale Clients and reported to the operator of the ASX Market; and
 - (ii) 1,439 Market Transactions for 53 Wholesale Clients and reported to the operator of the Chi-X Market.
15. The MDP has reasonable grounds to believe that UBS contravened subsection 798H(1) of the Act on 13,703 occasions by reason of contravening ASX Rule 3.4.1 on 12,264 occasions and by reason of contravening Chi-X Rule 3.4.1 on 1,439 occasions.
16. The penalties payable in relation to the alleged contraventions are as follows:
 - (a) in relation to the alleged contraventions of subsection 798H(1) of the Act by reason of contravening ASX Rule 3.4.1—the penalty payable is \$27,500 for one of those contraventions, and the penalty payable for the remainder is nil; and
 - (b) in relation to the alleged contraventions of subsection 798H(1) of the Act by reason of contravening Chi-X Rule 3.4.1—the penalty payable is \$27,500 for one of those contraventions, and the penalty payable for the remainder is nil.
17. The apportionment of the \$55,000 penalty for the alleged contraventions of ASX and Chi-X Rule 3.4.1 in relation to incorrect disclosures of trading as Principal into \$27,500 (ASX Rule 3.4.1) and \$27,500 (Chi-X Rule 3.4.1) was an apportionment determined after taking into account that the same course of conduct gave rise to alleged contraventions of the same rule in the ASX Rules and the Chi-X Rules.
18. The MDP accepts that the issue was caused by a deficiency in UBS' Sapphire Fast Order Entry system which resulted in all Orders entered through it being tagged as "agency" Orders regardless of whether the Order was submitted as an agent or as Principal.
19. The penalty payable (\$55,000) for the incorrect disclosures in relation to trading as Principal was higher than the penalty payable (\$35,000) for the incorrect disclosures in relation to execution venue, despite the number of affected confirmations (13,703) in relation to trading as Principal being significantly less than the number of confirmations affected by the incorrect disclosure of execution venues (171,021), on the basis that the

MDP considers that disclosure about trading as Principal (which is principally concerned with the disclosure of conflicts, including the risk of “front running”) is relatively more important than disclosures about execution venue (which is principally concerned with disclosure about order flow).

Regulatory Data to Market Operators

20. The MDP has reasonable grounds to believe that UBS contravened Competition Rule 5A.2.1 and thereby contravened subsection 798H(1) of the Act between 1 August 2015 and 1 June 2016 by:
 - (a) transmitting a total of 78,833 Orders to the Order Books of ASX and Chi-X (comprising 63,508 Orders to ASX; and 15,325 Orders to Chi-X) that included Regulatory Data that incorrectly reported that UBS had acted as agent for a client when it in fact had acted as Principal in relation to the Orders;
 - (b) submitting a total of 924 Trade Reports to ASX and Chi-X (comprising 923 Trade Reports to ASX; and 1 Trade Report to Chi-X) that included Regulatory Data that incorrectly reported that UBS had acted as agent for a client when it in fact had acted as Principal in relation to the Transactions.
21. As Competition Rule 5A.2.1(1) and (2) respectively apply in relation to each Order transmitted to an Order Book, and each Trade Report submitted to a Market Operator, the MDP has reasonable grounds to believe UBS contravened subsection 798H(1) of the Act on 79,756 occasions by reason of contravening Competition Rule 5A.2.1(1) on 78,832 occasions and by reason of contravening Competition Rule 5A.2.1(2) on 924 occasions.
22. The MDP accepts that the issue was caused by a deficiency in UBS’ Sapphire Fast Order Entry system which resulted in all Orders entered through it being tagged as “agency” Orders regardless of whether the Order was submitted as an agent or as Principal.
23. The penalties payable in relation to the alleged contraventions are as follows:
 - (a) in relation to the alleged contraventions of subsection 798H(1) of the Act by reason of contravening Competition Rule 5A.2.1(1)—the penalty payable is \$30,000 for one of those contraventions, and the penalty payable for the remainder is nil; and
 - (b) in relation to the alleged contraventions of subsection 798H(1) of the Act by reason of contravening Competition Rule 5A.2.1(2)—the penalty payable is \$20,000 for one of those contraventions, and the penalty payable for the remainder is nil.
24. The apportionment of the \$50,000 penalty for the two alleged contraventions of Competition Rule 5A.2.1 into \$30,000 (in relation to Orders) and \$20,000 (in relation to Trade Reports) was an apportionment determined after taking into account that the same course of conduct resulted in the provision of incorrect Regulatory Data.

25. The penalty payable (\$30,000) for the incorrect Regulatory Data about Orders was higher than the penalty payable (\$20,000) for the incorrect Regulatory Data about Trade Reports because the MDP considers that information about Orders is more useful to a regulator than disclosures about Trade Reports because Orders reveal more about market conduct and misconduct than Trade Reports.
26. In considering this matter and the appropriate penalty, the MDP commented:
- (a) in relation to incorrect disclosures in the confirmation notices:
 - (i) the rules in relation to confirmation notices promote honesty and trust in clients' dealings with Market Participants. The disclosure of incorrect information reduces investors' confidence in financial markets;
 - (ii) although the MDP has reasonable grounds to believe that UBS contravened ASX and Chi-X Rule 3.4.1, the matter is better characterised for the purposes of the appropriate penalty as UBS failing to satisfy ASX and Chi-X Rule 3.4.3 in relation to Wholesale Clients;
 - (iii) the respective periods of time the system errors persisted without detection by UBS were significant — 14 months (incorrect disclosure of execution venue) and 10 months (incorrect disclosure in relation to trading as Principal) — however the system errors could be fairly regarded as minor in the overall context because:
 - (A) the number of confirmations affected by the incorrect disclosure of execution venue during the relevant period represented 0.2% of all confirmations over the same period; and
 - (B) the number of confirmations affected by the incorrect disclosure in relation to trading as Principal during the relevant period represented 0.04% of confirmations over the same period;
 - (b) in relation to the provision of incorrect Regulatory Data to Market Operators:
 - (i) Competition Rule 5A.2.1 is concerned with enhanced market supervision by requiring Markets Participants to provide data (Order messages and Trade Reports) to Market Operators. The provision of this Regulatory Data to Market Operators also ensures that ASIC is able to obtain sufficient and appropriate market data in a timely manner to enable it to monitor and detect market misconduct in light of rapidly developing technology and increasingly complex trading strategies. The provision of incorrect Regulatory Data to Market Operators impedes informed regulatory decision-making by Market Operators and by ASIC;
 - (ii) although the MDP accepts that the system error that caused the incorrect disclosure to Wholesale Clients in relation to trading as Principal in confirmation notices was the same system error that also caused the provision of incorrect Regulatory Data to the Market Operators, the MDP considers that the potential impact on decision-making by regulators is

separate and distinct from decision-making by Wholesale Clients, a distinction which justified a separate penalty for the provision of incorrect Regulatory Data;

- (c) on becoming aware of the system errors, UBS promptly notified all affected Wholesale Clients and made corrective disclosures, and adopted appropriate and effective measures, including suspending use of its Fast Order Entry system and implementing manual reporting until the system errors were fixed.
27. UBS did not derive any benefit from the conduct, which was self-reported, and also cooperated with ASIC throughout its investigation.
28. UBS has been previously sanctioned by the MDP in June and September 2013 for alleged contraventions of the market integrity rules, but those matters involved conduct of a different kind to this matter.
29. The penalties payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act are as follows:
- (a) by reason of contravening ASX Rule 3.4.1 (execution venue)—\$17,500;
 - (b) by reason of contravening Chi-X Rule 3.4.1 (execution venue)—\$17,500;
 - (c) by reason of contravening ASX Rule 3.4.1 (trading as Principal)—\$27,500;
 - (d) by reason of contravening Chi-X Rule 3.4.1 (trading as Principal)—\$27,500;
 - (e) by reason of contravening Competition Rule 5A.2.1 (Orders)—\$30,000;
 - (f) by reason of contravening Competition Rule 5A.2.1 (Trade Reports)—\$20,000.

Other information

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

- by reason of contravening ASX Rule 3.4.1—\$100,000;
- by reason of contravening Chi-X Rule 3.4.1—\$100,000;
- by reason of contravening Competition Rule 5A.2.1—\$1,000,000.

The maximum pecuniary penalty payable under an infringement notice in relation to an alleged contravention of subsection 798H(1) of the Act is:

- by reason of contravening ASX Rule 3.4.1—\$60,000;
- by reason of contravening Chi-X Rule 3.4.1—\$60,000;
- by reason of contravening Competition Rule 5A.2.1—\$600,000.

To comply with this infringement notice, UBS must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to UBS and ends 27 days after the day on which it is given. Payment is made by bank cheque to the order of “Australian Securities and Investments Commission”.

The effects of compliance with this infringement notice are:

- (a) any liability of UBS to the Commonwealth for the alleged contravention of

subsection 798H(1) of the Act is discharged; and

- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against UBS 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; and
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against UBS 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; and
- (d) UBS is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) UBS is not taken to have contravened subsection 798H(1) of the Act.

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

UBS may apply to ASIC for withdrawal of this infringement notice under regulation 7.2A.11 of the Regulations; and for an extension of time to comply under regulation 7.2A.09 of the Regulations.

ASIC may publish details of this notice under regulation 7.2A.15 of the Regulations.



Grant Moodie

Special Counsel to the Markets Disciplinary Panel
with the authority of a Division of ASIC

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.