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Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: Epoch Capital Pty Ltd

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: Epoch Capital Pty Ltd ACN 128 329 395
Level 7, 32 Martin Place
SYDNEY NSW 2000

Matter: MDP 6023/15
Date given: 24 November 2017

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Epoch Capital Pty Ltd ("Epoch") under regulation 7.2A.04 of the Corporations Regulations 2001 ("the Regulations").

To comply with this notice Epoch must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **$130,000.**

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 ASIC Market Integrity Rules (ASX 24 Market) 2010 ("the Rules") as in force at the time of the conduct.

Details of the alleged contravention

1. Epoch was a Trading Participant and Principal Trader in the Market operated by ASX at all relevant times and was required by subsection 798H(1) of the *Corporations Act 2001* ("the Act") to comply with the Rules.

2. Rule 3.1.2(1)(a)(ii) of the Rules relevantly provided:

   A Market Participant must not offer to purchase or sell a Contract or deal in any Contract:

   (a) as Principal: …

   (ii) if that offer to purchase or sell or dealing has the effect, or is likely to have the effect,

   of creating a false or misleading appearance of active trading in any Contract or with respect to the market for, or price of, any Contract.

3. Epoch traded Ten Year Commonwealth Treasury Bond Futures Contracts (XT) on the ASX 24 Market. Epoch implemented the trading through what is commonly known as "calendar spread contracts" during a period in the lead up to the expiration of the Contracts. The period is more commonly known as the "roll period" during which Participants will typically Close Out open positions in

expiring Contracts and simultaneously create Open Positions in Contracts for the next period.

4. Epoch utilised a depth of market stop loss function to mitigate risk. The depth of market stop loss was configured to trigger if the depth of the market fell below 120,000 lots on either the bid or offer side of the XT Contracts.

5. The Markets Disciplinary Panel ("the MDP") has reasonable grounds to believe that Epoch contravened Rule 3.1.2(1)(a)(ii) and thereby contravened subsection 798H(1) of the Act in relation to the trading of XT "calendar spread contracts" on the ASX 24 Market in March and June 2015.

March Trades

6. The trading by Epoch on 11 March 2015 concerned the Ten Year Commonwealth Treasury Bond Futures Contract March 2015 June 2015 Roll ("XTH5M5").

7. A reduction in volume on the bid side of XTH5M5 triggered Epoch's depth of market stop loss. The stop loss caused Epoch to enter nine sell Orders (the "March Sell Orders") in XTH5M5 totalling 89,991 lots at the priority bid price. At the time Epoch entered the March Sell Orders it also had four buy Orders (the "March Buy Orders") in XTH5M5 totalling 19,305 lots at the priority bid price.

8. The March Sell Orders were executed against the March Buy Orders and did not involve any change in beneficial ownership. The execution of these Orders had an effect on two separate Contracts resulting in:

(a) five trades in the Ten Year Commonwealth Treasury Bond Futures March 2015 Contract ("XTH5") by Epoch that did not involve any change in beneficial ownership, with those five trades representing 4.89% of the total volume of XTH5 traded on the day ("contravention 1"); and

(b) five trades in the Ten Year Commonwealth Treasury Bond Futures June 2015 Contract ("XTM5") by Epoch that did not involve any change in beneficial ownership, with those five trades representing 5.3% of the total volume of XTM5 traded on the day ("contravention 2").

June Trades

9. The trading by Epoch on 10 June 2015 concerned the Ten Year Commonwealth Treasury Bond Futures Contract June 2015 September 2015 Roll ("XTM5U5").

10. A reduction in volume on the offer side of XTH5U5 triggered Epoch's depth of market stop loss. The stop loss caused Epoch to enter 12 buy Orders ("June Buy Orders") in XTH5U5 totalling 115,000 lots at the priority offer price. At the time Epoch entered the June Buy Orders it also had nine sell Orders ("June Sell Orders") in XTH5U5 totalling 70,108 lots at the priority offer price.

11. The June Sell Orders were executed against the June Buy Orders and did not involve any change in beneficial ownership. The execution of these orders had an effect on two separate Contracts resulting in:

    (a) 15 trades in the Ten Year Commonwealth Treasury Bond Futures Contract June 2015 Contract ("XTM5") by Epoch that did not involve any change in beneficial ownership, with those 15 trades in XTM5 representing 12.85% of the total volume of XTM5 traded on the day ("contravention 3"); and

    (b) 15 trades in the Ten Year Commonwealth Treasury Bond Futures Contract September 2015 ("XTU5") by Epoch that did not involve any change in beneficial ownership, with those 15 trades in XTU5 representing 13.66% of the total volume of XTU5 traded on the day ("contravention 4").

12. The MDP considers that each XT "calendar spread contract" is comprised of two separate Contracts. Accordingly, there were four separate contraventions:

    (a) there were two contraventions in relation to the March Trades on the basis that, while the two contraventions arose from a single course of conduct on 11 March 2015, those Trades involved two separate Contracts (namely XTH5 and XTM5); and

    (b) there were two contraventions in relation to the June Trades on the basis that, while the two contraventions arose from a single course of conduct on 10 June 2015, those Trades involved two separate Contracts (namely XTM5 and XTU5).

13. The March and June Trades resulted in dealing in Contracts that had the effect of creating, or was likely to have had the effect of creating, a false or misleading appearance of active trading because the offer to purchase and sell did not result in taking a genuine, bona fide position in the Contracts. As the Trades resulted in no change in beneficial ownership, the Trades misleadingly appeared to be genuine trades which had an effect on the trading volumes by giving the effect of an appearance of more active trading in the Contracts than was in fact the case.

14. The MDP considers that Epoch's conduct had the potential to affect supply, demand and liquidity and ultimately the price or value of the Contracts, and the potential to undermine the integrity of the ASX 24 Market.

15. The penalties payable for the four alleged contraventions are as follows:

    (a) contravention 1—$15,000
    (b) contravention 2—$15,000
    (c) contravention 3—$50,000
    (d) contravention 4—$50,000.

16. The total penalty that Epoch must pay to the Commonwealth is $130,000.

17. At that time of the March Trades, Epoch did not have an appropriate tool to prevent it crossing with itself in the ASX 24 Market. By the time of the June Trades, Epoch had developed such a tool but failed to implement it.

18. The MDP considers that the June Trades (contraventions 3 and 4) warrant a higher penalty than the March Trades (contraventions 1 and 2) because:

    (a) the conduct that comprised the March Trades was merely careless. Epoch reported the Trades to ASIC, and subsequently developed an enhanced cross trading prevention tool to prevent trades involving no change in beneficial ownership from occurring in the future;

    (b) the conduct that comprised the June Trades was negligent. Even though Epoch had developed an enhanced cross trading prevention tool, it had to be manually activated at the discretion of individual traders. Epoch did not monitor the use of this mechanism by its traders despite the fact that the events that occurred on the day of the June Trades were reasonably foreseeable having regard to the events that transpired in the earlier "roll period" in March 2015.

19. Epoch should not have left activation of the cross trading prevention tool to the discretion of its individual traders without sufficient monitoring.

20. The MDP also took into account the following mitigating factors. Epoch also promptly reported the June Trades to ASIC and subsequently changed its systems to operate automatically rather than manually so as to remove the discretion of its traders to implement the cross trading prevention tool. Epoch assisted and fully cooperated with ASIC in this matter. Epoch also does not have any prior history of failure to comply with the market integrity rules.

Other information

The maximum pecuniary penalty that a Court could order Epoch to pay for contravening subsection 798H(1) of the Act by reason of contravening Rule 3.1.2(1)(a)(ii) is $1,000,000.

The maximum pecuniary penalty that may be payable by Epoch under an infringement notice in relation to the alleged contravention of Rule 3.1.2(1)(a)(ii) is $600,000.

<u>Compliance with the infringement notice</u>

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

The effects of compliance with this infringement notice are:

(a) any liability of Epoch 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 Epoch 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 Epoch 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) Epoch is not taken to have admitted guilt or liability in relation to the alleged contraventions; and

(e) Epoch is not taken to have contravened subsection 798H(1) of the Act.

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

Epoch may apply to ASIC for withdrawal of this 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 the Australian Securities and Investments Commission

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.