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Australian Securities &
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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Nomura 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.

RIGHTS OF REVIEW

Recipients affected by the decision of the Markets Disciplinary Panel to give them an infringement notice under subsection 798H(1) of the *Corporations Act 2001* and Part 7.2A of the *Corporations Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn. ASIC has published RG 216 to assist recipients to determine whether they have such rights – see RG 216.71 and RG 216.77 to 216.79. Copies of this document can be obtained from the ASIC website at www.asic.gov.au

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: Nomura Australia Limited
Level 25, Governor Philip Tower
1 Farrer Place
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission (**ASIC**) gives this infringement notice to Nomura Australia Limited (**Nomura**) under regulation 7.2A.04 of the *Corporations Regulations 2001* (the **Regulations**). To comply with this notice Nomura must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
\$30,000

This infringement notice is given on 29 February 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is **MDP 29271/11**.

Alleged contravention and penalty

Nomura was an ASX Trading Participant at the relevant time and was therefore an entity required by subsection 798H (1) of the *Corporations Act 2001* (**the Act**) to comply with the market integrity rules at that time.

Nomura is alleged to have contravened subsection 798H(1) of the Act by reason of contravening market integrity rule 5.9.1 of the *ASIC Market Integrity Rules (ASX Market) 2010* (**MIR 5.9.1**), which provides:

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

On the evidence before it, ASIC's Markets Disciplinary Panel was satisfied that:

- (1) At 10:26:46 on the 18 March 2011, a facilitation trader at Nomura (**the Trader**) sought to enter what Nomura calls a 'parent order', using the Iress execution platform called "IOS Plus", to sell 1 million AWC at \$2.16. A parent order is an order entered by Nomura into IOS that is not transmitted directly on the market and which is subsequently 'sliced' by Nomura into 'child' orders which are entered into the market.
- (2) Prior to this order, the market for AWC was \$2.22/\$2.23/\$2.25 (Bid/Ask/Last). A total of 88,513 AWC were on bid at \$2.22.
- (3) Instead of entering the parent order as described, the Trader in fact entered an order onto the market to sell 1 million AWC at \$2.16 (**Order 1**).
- (4) Order 1 traded immediately, moving the price of AWC from \$2.22 down to \$2.16, a 2.7% decrease and resulting in a Bid/Ask/last of \$2.16/\$2.23/\$2.16. At 10:27:33 the market in AWC was \$2.19/2.20/\$2.20 (Bid/Ask/Last). This remained the case until entry of the second order, as follows.
- (5) At 10:27:33, less than one minute after the entry of Order 1, the Trader entered a second order to sell 1 million AWC at \$2.00 (**Order 2**).
- (6) Order 2 was entered by the Trader in error when he did not see Order 1 appear in the system as a parent order. He was under the mistaken belief that Order 1 had not been registered in IOS, when in fact, Order 1 had been entered onto the market and had traded, as set out above.
- (7) Order 2 traded immediately and moved the price of AWC from \$2.20 to \$2.00, a 9% decrease resulting in a Bid/Ask/Last of \$2.00/\$2.20/\$2.00.
- (8) At 10:30:00, approximately two and half minutes after the second error, the AWC price had recovered to \$2.19/\$2.20/\$2.20 (Bid/Ask/Last).
- (9) By reason of its placement of Orders 1 and 2 (the Relevant Orders) on 18 March 2011, the Markets Disciplinary Panel has reasonable grounds to believe that Nomura has contravened MIR 5.9.1 and as a result, contravened subsection 798H(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Nomura to pay for contravening the market integrity rule that Nomura is alleged to have contravened is \$1,000,000

Penalty under the Infringement Notice

The penalty payable under this infringement notice for the alleged contravention of subsection 798H(1) of the Act and therefore the total penalty that Nomura must pay to the Commonwealth is \$30,000.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

In determining the appropriate penalty in this matter ASIC's Markets Disciplinary Panel took into account all relevant guidance in ASIC Regulatory Guide 216 and noted in particular the following :

- MIR 5.9.1 is aimed at ensuring a fair, open and transparent trading system, with a strict obligation imposed on Market Participants not to do anything which results in a market for a product not being both fair and orderly. The conduct had the potential to damage the reputation and integrity of the Market;
- The conduct appears to have been inadvertent on the part of the Nomura Trader, rather than deliberate or reckless. Whilst the Relevant Orders were entered in error, the Trader failed to enter them with appropriate care. In particular, he entered Order 2 without first having taken reasonable steps to ascertain whether Order 1 had registered in IOS;
- Nomura did not have any specific controls in place to prevent an error such as the one in this matter;
- On the business day following the incident, Nomura implemented a number of facilitation trading prompts to prevent a recurrence of an incident such as this.
- Nomura co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Nomura agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- This was an isolated incident;
- Nomura has no recorded history of non-compliance with the Market Integrity Rules or the prior ASX Market Rules.

Compliance with the Infringement Notice

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

To comply with this infringement notice, Nomura must pay the Penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to Nomura; and
- (b) ends 27 days after the day on which the infringement notice is given to Nomura;
- (c) unless an application is made for its extension.

Nomura may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If Nomura does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If Nomura applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- (a) 28 days after the day on which the infringement notice was given to the recipient; and
- (b) 7 days after the notice of refusal is given to the recipient.

Nomura may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If Nomura does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to Nomura.

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Nomura 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 Nomura 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; and
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against Nomura 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; and
- (d) Nomura is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Nomura is not taken to have contravened subsection 798H(1) of the Act.

Publication

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



Susan Humphreys

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities and Investments Commission

Dated : 29 February 2012.

Note: Members of ASIC's Market Disciplinary Panel constitute a Division of ASIC as delegates of the members of the Division for the purposes of considering the allegation covered by this notice.