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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Susquehanna Pacific 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.

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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:

Susquehanna Pacific Pty Ltd
Level 41
The Chifley Tower
2 Chifley Square
Sydney NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Susquehanna Pacific Pty Ltd ACN 082 467 605 ("Susquehanna") under regulation 7.2A.04 of the *Corporations Regulations 2001* ("the Regulations"). To comply with this notice Susquehanna must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
\$25,000.

This infringement notice is given on 17 December 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP17885/12.

Alleged contravention and penalty

Susquehanna 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.

Susquehanna is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Market Integrity Rule 5.6.1 of the *ASIC Market Integrity Rules (ASX Market) 2010* ("MIR 5.6.1"), which provides:

- "A Market Participant which uses a system for Automated Order Processing must at all times:*
- (a) have appropriate automated filters, in relation to Automated Order Processing; and*
 - (b) ensure that such use does not interfere with:*
 - (i) the efficiency and integrity of the Market; or*
 - (ii) the proper functioning of any Trading Platform."*

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

- 1) On Thursday 17 November 2011, at approximately 18:00:00, the information technology ("IT") department of Susquehanna inadvertently disabled a price filter for its Automated Order Processing ("AOP") system which related to Exchange Traded Funds ("ETF"). The AOP system for ETF was being upgraded when the ETF price filter was disabled.
- 2) The other instances of the AOP system which are used by Susquehanna to trade financial products other than ETFs were not rendered inoperative by the upgrade. All other automated filters within the AOP system for ETFs were also unaffected.
- 3) On Monday 21 November 2011, at 16:00:03, Susquehanna's Automated Quoting System miscalculated the price of fully paid units in SPDR MSCI Australia Select High Dividend Yield Fund ("SYI") and subsequently amended the price of an existing Order to sell 8,000 SYI from \$22.71 to \$0.046 ("the Relevant Order"). As the price filter for ETFs was inadvertently disabled, the Relevant Order was routed to the Trading Platform, despite being at a price which was significantly lower than the last traded price.
- 4) At 16:09:22, an order to buy 8000 SYI at \$0.055 was entered into the trading platform by another market participant.
- 5) At 16:10:00, upon the open of the closing single price auction, the Relevant Order resulted in four Market Transactions for a total of 8000 SYI at the buy price of \$0.055 and resulted in a decrease of the price of SYI from \$22.71 to \$0.055, being a 99.76% decrease.
- 6) At approximately 16:14:00 a Susquehanna Representative telephoned ASX Market Control and requested Trade Cancellations. The request was granted in accordance with ASX Operating Rule 3200 at 16:27:00 with an ASX Circular confirming the Trade Cancellations being released at approximately 16:38:00.
- 7) At approximately 17:00:00, the ETF price filter had been reactivated by Susquehanna IT staff.

Accordingly, as a result of the disabling of a filter in its AOP system for ETF trading on 17 November 2011, which subsequently resulted in a 99.76% price decrease caused by the Relevant Order on 21 November 2011, the Markets Disciplinary Panel has reasonable grounds to believe Susquehanna contravened subsection 798H(1) of the Act by reason of its failure to comply with MIR 5.6.1, in that Susquehanna did not at all times have in place appropriate automated filters in relation to the use of its AOP system, and did not ensure that such use did not interfere with the integrity of the Market.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Susquehanna to pay for contravening MIR 5.6.1 is \$1,000,000. The maximum penalty that may be payable under an infringement notice for an alleged contravention of that rule is \$600,000.

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 Susquehanna must pay to the Commonwealth is \$25,000.

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 the Markets Disciplinary Panel took into account all relevant guidance and noted in particular the following:

- MIR 5.6.1 is aimed at ensuring a fair, orderly and transparent trading system, with a strict obligation imposed on Market Participants which use systems for AOP, to ensure that at all times they have appropriate automated filters and that their AOP systems do not interfere with the efficiency and integrity of the Market;
- The conduct was inadvertent on the part of Susquehanna, rather than deliberate or reckless;
- The alleged breach was an isolated incident that resulted from the ETF price filter being inadvertently disabled;
- Market impact caused by the alleged contravention was minimal and there were no follow on trades;
- Susquehanna did not derive any actual benefit from the alleged contravention of MIR 5.6.1. However, the alleged breach had the potential to damage third parties as there was a contribution by Susquehanna to a closing price for the ETF for a 17 minute period which had the potential to damage public confidence in the SYI market, especially given closing prices are an important reference price;
- Susquehanna has co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Susquehanna contacted the ASX Market Control and sought cancellation of the trades at approximately 16:14:00 and the ASX cancelled the trades at 16:27:00 with an ASX Circular confirming the Trade Cancellations being released at approximately 16:38:00. At approximately 17:00:00 Susquehanna had identified the inoperative filter and rectified the issue by re-activating the appropriate filter;
- Susquehanna agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- Susquehanna has no recorded history of non-compliance with the Market Integrity Rules or the prior ASX Market Rules;

- Susquehanna undertook remedial measures to prevent a recurrence of the alleged breach including:
 - revising and updating its Compliance Plan;
 - implementing additional policies and procedures in relation to AOP connectivity, AOP filter parameters, changes to filter parameters and monitoring indicative prices of ETFs; and
 - providing training to all relevant staff in relation to its revised policies and procedures.

Compliance with the Infringement Notice

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

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

- (a) starts on the day on which the infringement notice is given to Susquehanna; and
- (b) ends 27 days after the day on which the infringement notice is given to Susquehanna;

unless an application is made for its extension.

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

If Susquehanna 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 Susquehanna; and
- (b) 7 days after the notice of refusal is given to Susquehanna.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Susquehanna 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 Susquehanna 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 Susquehanna 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) Susquehanna is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Susquehanna 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 & Investments Commission

Dated: 17 December 2012