



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

No. MDP02/11, Monday, 12 December 2011

Published by ASIC

ASIC Gazette

Contents

Markets Disciplinary Panel Infringement Notice

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

ISSN 1445-6060 (Online version)
ISSN 1445-6079 (CD-ROM version)

Available from www.asic.gov.au
Email gazette.publisher@asic.gov.au

© Commonwealth of Australia, 2011

This work is copyright. Apart from any use permitted under the *Copyright Act 1968*, all rights are reserved. Requests for authorisation to reproduce, publish or communicate this work should be made to: Gazette Publisher, Australian Securities and Investment Commission, GPO Box 9827, Melbourne Vic 3001



PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To:

Austock Securities Limited
Level 1
350 Collins St
Melbourne, VIC, 3000

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

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

This infringement notice is given on 8 November 2011.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP Ref No. 18023/11.

Alleged contravention and penalty

Austock 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.

Austock 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."

- (1) At 10:41:00 on 30 March 2011, Austock entered an Order on the Trading Platform to sell 106,761 fully paid, ordinary shares in Newcrest Mining Limited, having ASX Code "NCM", at \$0.12 on behalf of a client ("the Order").

- (2) The Order was erroneous in that Austock intended to sell 106,761 shares in the fully paid ordinary shares of Engenco Limited, having ASX Code "EGN", at \$0.12 on behalf of a client.
- (3) At 10:41:56, the Order triggered the following warning in the Iress Order System ("IOS"): "*Order breached operator threshold of \$0.00*". As such, the order was diverted to an Austock DTR for review.
- (4) At 10:42:02, the DTR received the IOS alert and approved the Order by submitting it onto the Trading Platform. The Bid/Ask/Last in NCM immediately prior to the DTR submitting the Order was \$39.67/\$39.68/\$39.68. (Attachment 5)
- (5) The Order traded immediately and in its entirety causing the price of NCM to fall \$2.18 from \$39.68 to \$37.50, or 5.5%. The Order resulted in 98 Market Transactions with a total value of \$4,139,329.07 and involved 22 Market Participants as counterparties on the buy side. Trade cancellations were made.
- (6) By reason of its execution of the Order on 30 March 2011, Austock appears to have contravened MIR 5.9.1 and thereby contravened Section 798(H)(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Austock to pay for contravening the market integrity rule that Austock 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 Austock 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 misconduct had the potential to damage the reputation and integrity of the Market;
- Austock had an alert procedure in place. However, it is questionable whether the message generated was helpful as it did not accurately reflect the circumstances of the order;
- Although the DTR involved in this matter was an experienced DTR with no history of previous errors, he failed in this case to perform this function to the requisite high

standard, although ASIC considers that he was not assisted by the content of the warning he received;

- Austock co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Austock agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- This was an isolated incident;
- Austock has no recorded history of non-compliance with the Market Integrity Rules or the prior ASX Market Rules;
- An important aspect of the role of the Designated Trading Representative (DTR) is to review and prevent the entry of orders into the trading platform that could result in a market that is not fair or orderly. This is a critical measure in maintaining the integrity of the market.

Compliance with the Infringement Notice

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

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

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

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

If Austock 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.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Austock 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 Austock 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 Austock 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) Austock is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Austock 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 : 10 November 2011