



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

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Contents

Markets Disciplinary Panel Infringement Notice

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

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**PART 7.2A OF THE CORPORATIONS REGULATIONS 2001
INFRINGEMENT NOTICE**

To: Commonwealth Securities Limited
Ground Floor, Darling Park Tower 1
201 Sussex Street
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Commonwealth Securities Limited ACN 067 254 399 ("CommSec") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice CommSec must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$55,000**.

This infringement notice is given on 14 February 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP20866/13.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 have the same meaning when used in this notice, including those set out in the Appendix to this notice. Certain additional defined terms used in this notice are also set out in the Appendix to this notice.

Alleged contravention and penalty

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

CommSec is alleged to have contravened subsection 798H(1) of the Act by reason of contravening 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, the Markets Disciplinary Panel ("MDP") was satisfied that:

- 1) On 20 December 2012 at 10:10:04, CommSec received from a client by Direct Market Access, an Order to buy 10,000 My Net Fone Limited fully paid ordinary shares having ASX code ("MNF") at an 'at-market' price ("Initial Order").
- 2) Immediately prior to the Initial Order, the market for MNF was \$1.005/\$1.18/\$0.94 (buy/sell/last traded price) which included three sell Orders totalling 6,152 MNF at three price levels up to and including \$10.00.
- 3) On receipt, the Initial Order immediately triggered CommSec's automated 'orderly market' filter on its Automated Order Processing system and was diverted to a CommSec DTR ("CommSec DTR") for assessment.
- 4) After assessing the Initial Order, the CommSec DTR next intended to amend the Initial Order's price from 'at-market' to a limit of \$1.01. However, at 10:10:25, the CommSec DTR incorrectly keyed the price as \$101.00 instead of the intended \$1.01 into one of CommSec's trading systems ("Trading System"), and submitted an Order to buy 10,000 MNF at a price of \$101.00 into the ASX Trading Platform ("Relevant Order").
- 5) The Relevant Order immediately traded in part resulting in three Market Transactions for a total of 6,152 MNF up to a price of \$10.00 ("Relevant Transactions"). At 10:10:38, on realising his error, the CommSec DTR deleted the residual part of the Relevant Order.
- 6) The entry into the ASX Trading Platform of the Relevant Order, resulting in the Relevant Transactions, caused the price of MNF to rise from \$0.94 to \$10.00, being a \$9.06 or 964% increase in the price of MNF.
- 7) At 10:11:00, CommSec initially notified the ASX of the Relevant Order and requested cancellation of the Relevant Transactions as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time. The ASX agreed to cancel only one part of the Relevant Transactions, being the Market Transaction for 2,900 MNF at \$10.00. The residual two parts of the Relevant Transactions, being one Market Transaction for 1,552 MNF at \$1.18 and another for 1,700 MNF at \$1.20, were not cancelled.

By reason of CommSec's entry of the Relevant Order into the ASX Trading Platform on 20 December 2012, the MDP has reasonable grounds to believe that CommSec has contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order CommSec to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 5.9.1 is \$1,000,000.

The maximum pecuniary penalty that may be payable by CommSec under an infringement notice given pursuant to subsection 798K(2) of the Act 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 CommSec must pay to the Commonwealth is **\$55,000**.

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 this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance, including ASIC Regulatory Guide 216—*Markets Disciplinary Panel*, and noted in particular the following:

- MIR 5.9.1 is aimed at promoting confidence in the integrity of the market. Imposing a strict obligation on Market Participants not to do anything which results in a market for a Product not being both fair and orderly, is critical in maintaining the integrity of the market;
- The misconduct had the potential to damage the reputation and integrity of the market, as the entry of the Relevant Order into the ASX Trading Platform caused the price of MNF to increase from the last traded price of \$0.94 to \$10.00, being a 964% increase;
- The misconduct was inadvertent on the part of CommSec as the CommSec DTR failed to properly exercise his functions to the requisite high standard when he incorrectly keyed in the price as \$101.00 instead of the intended \$1.01, before submitting the Relevant Order into the ASX Trading Platform;
- The MDP noted in this matter that the CommSec DTR, after keying the Relevant Order into the Trading System, did not receive any internal price variation warning messages or alerts prior to the Relevant Order being submitted into the ASX Trading Platform. Notwithstanding this, the MDP reiterated that an important aspect of the role of the DTR is to pay proper attention and diligence to prevent the entry of Orders into the Trading Platform that could result in a market that is not both fair and orderly. This is a critical measure in maintaining the integrity of a market;
- CommSec did not derive any actual or potential benefit from the breach;
- There was one breach of MIR 5.9.1;
- Upon becoming aware of the breach approximately 13 seconds after the Relevant Order had been entered into the ASX Trading Platform and resulted in the Relevant Transactions, the CommSec DTR cancelled the residual part of the Relevant Order. Approximately another 22 seconds thereafter, in accordance with procedure 3200 of the ASX Operating Rules Procedures at the relevant time, CommSec initially notified the ASX of the Relevant Order and requested cancellation of the Relevant Transactions, however the ASX later advised that it would only cancel one part of the Relevant Transactions, being the Market Transaction for 2,900 MNF at \$10.00;

- CommSec took steps to prevent recurrence of the breach by upgrading its Trading System. This upgrade, in stages through the first half of 2013:
 - added the functionality to amend prices using up and down arrows rather than having to key in the price;
 - resulted in prices being highlighted in the colour red when the price keyed in is more than 10% away from the prevailing last traded price; and
 - introduced price variation warning messages or alerts, being displayed when the price keyed in is more than 10% away from the prevailing last traded price;
- CommSec had two prior contraventions found against it by the MDP for non-compliance with the market integrity rules. In 2012 CommSec was fined \$35,000 by the MDP for breaching MIR 5.9.1 (MDP Infringement Notice MDP02/12 – dated 28 May 2012). Again in 2012, CommSec was fined \$50,000 by the MDP for breaching Rule 5.5.2 of the ASIC Market Integrity Rules (ASX Market) 2010 (MDP Infringement Notice MDP04/12 – dated 24 September 2012). CommSec had also been previously sanctioned by the ASX Disciplinary Tribunal relating to non-compliance with ASX Market Rule 14.1.1 (the predecessor rule to MIR 5.9.1) (ASX Circular 416/08 – dated 21 August 2008);
- The MDP confirmed its position that repeat contraventions in similar or comparable matters would not be viewed favourably;
- CommSec co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- CommSec agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of CommSec 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 CommSec 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 CommSec 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) CommSec is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) CommSec 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 MDP

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

Dated: 14 February 2014

Note: Members of ASIC's 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.

Appendix – Defined Terms

The terms defined in MIR 1.4.3 have the same meaning when used in this notice, including:

"ASX" means ASX Limited (ACN 008 624 691).

"Automated Order Processing" means the process by which orders are registered in a Trading Participant's system and, if accepted for submission into a Trading Platform by the Trading Participant, submitted as corresponding Trading Messages without being keyed or rekeyed by a DTR.

"DTR" means a Representative of the Trading Participant who has been authorised to submit Trading Messages to the Trading Platform on behalf of the Trading Participant.

"Market" means the market operated by the Market Operator under Australian Market Licence (Australian Stock Exchange Limited) 2002.

"Market Participant" means a Participant in the Market admitted under the Market Operating Rules

"Market Transaction" means a transaction for one or more Products, entered into on a Trading Platform or reported to the Market Operator under the Market Operating Rules

"Order" means:

- (a) In relation to Cash Market Products, an instruction to purchase or sell Cash Market Products, or an instruction to amend or cancel a prior instruction to purchase or sell Cash Market Products;

...

"Trading Messages" means those messages submitted into a Trading Platform relating to trading functions, such as Orders, amendment or cancellation of Orders and the reporting or cancellation of Market Transactions on the Trading Platform.

"Trading Participant" means a Market Participant which has Trading permission in respect of one or more Products.

"Trading Permission" means the right to submit Trading Messages in a Trading Platform

"Trading Platform" means a facility made available by the Market Operator to Trading Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions.

This notice adopts the following additional definitions of terms:

"Direct Market Access" means an Order submitted by a client of a Trading Participant into the Trading Participant's system and subject to Automated Order Processing.