



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.

This version of the infringement notice has been edited in a minor way to remove confidential information.

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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
ACN 067 254 399
G 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 ("CommSec") under regulation 7.2A.04 of the *Corporations Regulations 2001* ("the Regulations"). To comply with this notice CommSec must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
\$50,000

This infringement notice is given on 11 July 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP2494/12.

Alleged contravention and penalty

CommSec 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.

CommSec is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 5.5.2 of the *ASIC Market Integrity Rules (ASX Market) 2010* ("MIR 5.5.2"), which provides:

"A Trading Participant must have and maintain the necessary organisational and technical resources to ensure that:

a. Trading Messages submitted by the Trading Participant do not interfere with:

- i. the efficiency and integrity of the Market; or*
- ii. the proper functioning of a Trading Platform; and*

b. The Trading Participant complies at all times with these Rules and the Market Operating Rules."

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

- 1) Between 4 August 2010 and 20 January 2011 (inclusive), CommSec, on account of its client, executed 48 Crossings in the fully paid ordinary shares of Oaks Hotels & Resorts Limited, ACN 113 972 366, having ASX code 'OAK'. During the Relevant Period, the client placed 96 Orders in Oaks Hotels & Resorts Limited, ACN 113 972 366, having ASX code 'OAK', 48 on an account in the name of the client and 48 on an account in the name of the client & the client's wife ("the 48 Crossings").
- 2) The 48 Crossings involved no change in beneficial ownership ("NCBO") and falsely represented 11.88% on bona fide volume in OAK, creating the misleading appearance of active trading. This is inconsistent with the efficiency and integrity of the market as participants are likely to assume that the transactions reflect genuine supply and demand and act accordingly.
- 3) While CommSec did have filters and reviews in place to identify and prevent NCBO Orders from entering the market during the Relevant Period, the filters and reviews were not designed to filter NCBO transactions from accounts that were connected, but had different account numbers.
- 4) Three of the 48 Crossings, which did trigger unrelated filters, were reviewed and approved by CommSec Designated Trading Representatives ("DTRs").

By reason of CommSec not having and maintaining the necessary organisational and technical resources to ensure that the Trading Messages that resulted in the 48 Crossings were not submitted to the Trading Platform, the Markets Disciplinary Panel has reason to believe that CommSec has contravened MIR 5.5.2 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 the market integrity rule that CommSec 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 CommSec must pay to the Commonwealth is \$50,000.

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 5.5.2 is aimed at reinforcing the importance of having appropriate organisational and technical resources so that orders incompatible with the efficiency and integrity of the market are not submitted to the Trading Platform and the MIRs and Market Operating Rules are otherwise complied with;
- The conduct on the part of CommSec appears to have been reckless. Three of the Orders triggered filter alerts, and although this was not for NCBO reasons, the Orders were diverted to the relevant DTR for review who reviewed and approved them, despite the Orders being NCBO transactions;
- CommSec did have filters and reviews in place regarding NCBO Orders. However, the filters and reviews were inadequate as they were designed only to identify and filter NCBO transactions in which the account number was the same on both sides. The filters and reviews were not designed to filter NCBO transactions from accounts that were connected, but had different account numbers;
- CommSec has co-operated with ASIC and attempted to address concerns arising from the investigation, by way of engagement with ASIC;
- CommSec did not self-report the alleged breach to ASIC, but did report the matter to another regulator; and closed the client accounts on 11 February 2011;
- CommSec agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- One relevant action has been taken against CommSec in relation to the market integrity rules, and CommSec has been sanctioned by the ASX Disciplinary Tribunal on seven occasions since 2002.

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

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; and
- (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; and
- (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; and
- (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 Markets Disciplinary Panel

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

Dated: 11 July 2012

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.