



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

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# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

**Recipient:** Credit Suisse Equities (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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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](http://www.asic.gov.au)

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

To:

**Credit Suisse Equities (Australia) Limited**  
**Level 31**  
**Gateway**  
**1 Macquarie Place**  
**SYDNEY NSW 2000**

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Credit Suisse Equities (Australia) Limited, (ACN 068 232 708) ("Credit Suisse") under regulation 7.2A.04 of the *Corporations Regulations 2001* ("the Regulations"). To comply with this notice Credit Suisse must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of \$52,000.

This infringement notice is given on 29 August 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP31266/11.

### **Alleged contravention and penalty**

Credit Suisse was a participant in the market operated by ASX Limited 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.

Credit Suisse 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, ASIC's Markets Disciplinary Panel was satisfied that:

1. At 13:03 on 20 May 2011, a client of Credit Suisse erroneously initiated a Credit Suisse strategy with an instruction to purchase 942,517 ordinary shares in Celamin Holdings NL, having ASX code 'CNL' ("CNL"), ("the Relevant Order").
2. The relevant Credit Suisse strategy initiated by the client worked the Relevant Order by dynamically varying its participation rate ("Trading System 1").
3. The client intended to enter the instruction into another trading system ("Trading System 2") instead of Trading System 1. Trading System 1 and Trading System 2 were both trading strategies within Credit Suisse's Automated Order Processing System ("AOP").
4. The Relevant Order was entered into Trading System 1 without specifying a maximum participation rate. Trading System 1 therefore, aimed to complete the Relevant Order by market close on 20 May 2011.
5. The Relevant Order was then initiated by the Trading System 1 strategy by automatically generating orders by slicing the Relevant Order into a number of limit orders which resulted in:
  - (a) Credit Suisse by its AOP entering 1,272 Bids and amended Bids in CNL at prices between \$0.425 and \$0.78 onto the Market ("the CNL Bids"); and
  - (b) The CNL Bids transacted between 13:03:19 and 15:02:53 on 20 May 2011 ("the Relevant Period"), progressively increasing the price of CNL.
6. The entry of the CNL Bids into the Market during the Relevant Period resulted in:
  - (a) Credit Suisse purchasing 458,199 CNL in 39 Market Transactions, at prices from \$0.425 to \$0.780 inclusive;
  - (b) fifteen price increases, or 71 % of all price increases in CNL during the Relevant Period; and
  - (c) a 83.5% increase in the price of CNL from \$0.425 to \$0.780, that corresponded with Credit Suisse's transactions between 13:03:20 and 15:01:02 respectively.
7. At approximately 15:14, Credit Suisse became aware of a number of its system alerts in CNL and immediately de-activated the Relevant Order.
8. No AOP alerts were triggered immediately prior to the entry on the Trading Platform of any of the CNL Bids.
9. Credit Suisse's AOP filters were inappropriate in that they were unable to prevent Trading System 1, operating with no maximum participant rate, from creating price distortion in relation to the market in CNL.

By reason of Credit Suisse's placement on the ASX Market of the CNL Bids on 20 May 2011, the Markets Disciplinary Panel has reasonable grounds to believe that Credit Suisse has contravened MIR 5.6.1 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 Credit Suisse to pay for contravening the market integrity rule Credit Suisse 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 Credit Suisse must pay to the Commonwealth is \$52,000.

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 5.6.1 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 had the potential to damage the efficiency and integrity of the ASX Market.
- Credit Suisse self-reported to ASIC;
- Credit Suisse co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Credit Suisse agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- Credit Suisse took remedial action to prevent recurrence;
- It is accepted by the MDP that the breach was an isolated incident ; and
- Credit Suisse has no recorded history of non-compliance with the Market Integrity Rules.

### Compliance with the Infringement Notice

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

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

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

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

If Credit Suisse 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.

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

### Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

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

- (e) Credit Suisse 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 29 August 2012