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Australian Securities &
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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: UBS Securities Australia 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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: UBS Securities Australia Ltd
Level 16, Chifley Tower
2 Chifley Square
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to UBS Securities Australia Ltd ACN 008 586 481 ("UBS") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice UBS must:

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

This infringement notice is given on 18 September 2013.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP11705/13.

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.

Alleged contravention and penalty

UBS was a Market Participant in the Market operated by 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.

UBS 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 March 2012, at approximately 10:54am, a client of UBS ("Client") placed an Order to sell 193 Newcrest Mining Limited exchange traded June 2012 \$28.34 put options, having at the time ASX code ("NCMNK8"), at market price over the course of the day ("Relevant Order"). The Relevant Order was worked by a UBS DTR.
- 2) At approximately 10:55am, the UBS DTR entered the first part of the Relevant Order, being an Order to sell 18 NCMNK8 at \$1.12 into the ASX Trading Platform. The UBS DTR then incrementally decreased the price of the first part of the Relevant Order until, at approximately 10:56am, it traded with another participant's Bid at \$1.08, resulting in the first two Market Transactions for NCMNK8 that day.
- 3) The UBS DTR next intended to enter the second part of the Relevant Order, being an Order to sell 25 NCMNK8 at \$1.115 into the ASX Trading Platform. At approximately 11:21am, the UBS DTR entered the second part of the Relevant Order into the ASX Trading Platform. However, the UBS DTR incorrectly keyed in the price as \$0.115 instead of \$1.115. Immediately prior to the entry of the second part of the Relevant Order, the last traded price for NCMNK8 was \$1.055.
- 4) At approximately 11:21am, the second part of the Relevant Order traded in two Market Transactions—being for one NCMNK8 at \$0.115 and 24 NCMNK8 at \$0.115 ("Relevant Transactions").
- 5) The entry into the ASX Trading Platform of the second part of the Relevant Order, resulting in the Relevant Transactions, caused the price of NCMNK8 to fall from \$1.055 to \$0.115, being a \$0.94 or 89% decrease in the price of NCMNK8.
- 6) The Relevant Transactions transacted in the Extreme Cancellation Range, as set out in procedure 3200 of the ASX Operating Rules Procedures, and were subsequently cancelled by ASX.

By reason of UBS' entry of the second part of the Relevant Order into the ASX Trading Platform on 20 March 2012, the MDP has reasonable grounds to believe that UBS 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 UBS 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 UBS 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 UBS 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 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 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 breach had the potential to damage the reputation and integrity of the Market, as the second part of the Relevant Order caused the price in NCMNK8 to fall from \$1.055 to \$0.115, being an 89% decrease in the price of NCMNK8;
- The breach was inadvertent on the part of UBS as the UBS DTR failed to properly exercise his functions to the requisite high standard when he incorrectly keyed the price as \$0.115 instead of \$1.115 and entered the second part of the Relevant Order into the ASX Trading Platform;
- The MDP noted that in this matter the UBS DTR did not receive any price variation warning messages or alerts. Notwithstanding this, 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;
- UBS did not derive any actual or potential benefit from the breach;
- The UBS DTR became aware of the breach after the second part of the Relevant Order entered into the ASX Trading Platform had resulted in the Relevant Transactions. In accordance with rule [3200] of the ASX Operating Rules, UBS requested cancellation of the Relevant Transactions and subsequently contacted the relevant counterparties to confirm the agreement for cancellation;
- UBS took the following remedial measures to prevent recurrence of the breach:
 - conducted a review of all filter limits applicable to its exchange traded options trading desk;
 - implemented a number of new filters applicable to the exchange traded options desk; and

- implemented a quarterly review process whereby the filter reject levels and the application of the filters to clients and internal users in relation to trading exchange traded options are affirmed or amended;
- UBS has previously been sanctioned by the ASX Disciplinary Tribunal regarding the predecessor rule to MIR 5.9.1 and involving a DTR (ASX Circular 431/09 dated 3 December 2009). UBS has also recently been sanctioned by the MDP regarding a DTR in breach of MIR 5.9.1, (MDP Circular 2013–6 dated 8 August 2013). The MDP confirms its position that, repeat contraventions in similar or comparable matters will not be viewed favourably;
- UBS co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- UBS agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of UBS 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 UBS 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 UBS 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) UBS is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) UBS 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: 18 September 2013

Note: Members of the 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

"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" relevantly means:

- (a) In relation to Cash Market Products, an 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.