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Australian Securities &
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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Credit Suisse AG

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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: Credit Suisse AG
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 AG ARBN 061 700 712 ("Credit Suisse") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Credit Suisse must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$88,400**.

This infringement notice is given on 26 June 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP24618/13.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX 24 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

Credit Suisse was a Market Participant in the Market operated by the Australian Securities Exchange Limited ("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.

Credit Suisse is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 2.2.4(3), 3.1.17(1) and 3.1.13(1)(b) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 2.2.4(3), MIR 3.1.17(1) and MIR 3.1.13(1)(b)").

MIR 2.2.4(3) provides:

"A Market Participant must maintain a separate record of all Error Trades for a period of not less than five (5) years from the date of a Trade, containing the following information:

(a) a description of the Trade including the deal number supplied by the Market Operator (if any);

- (b) the name of the Representative responsible for the Error Trade;*
- (c) the name of the Representative responsible for the execution of the Trade;*
- (d) a detailed explanation as to how the Trade occurred, including details of the original Client Order (if any) which precipitated the error;*
- (e) any subsequent action taken by the Market Participant in relation to that Trade; and*
- (f) the financial result of the Trade."*

MIR 3.1.17(1) provides:

"A Market Participant must not offer and/or allocate Trades to a Client unless those Trades have been obtained under instructions previously obtained from that Client."

MIR 3.1.13(1)(b) provides:

"A Market Participant must not act in a manner which has, or is intended to have, a detrimental effect, on the Client's best interests."

On the evidence before it, the Markets Disciplinary Panel ("MDP") was satisfied that:

- 1) On 4 September 2012, at approximately 14:30:07, a Client of Credit Suisse ("Credit Suisse Client") placed an instruction with a Representative of Credit Suisse ("Credit Suisse Representative") to sell 2000 September 2012 ASX 30 Day Interbank Cash Rate Futures Contracts ("IBU2") at 96.510.
- 2) At 14:30:14, the Credit Suisse Representative instead mistakenly placed an Order to sell 2000 IBU2 at 96.505 which traded immediately in its entirety and resulted in an Error Trade ("Relevant Error").
- 3) At approximately 14:30:51, the Credit Suisse Representative contacted the Credit Suisse Client to explain that he had made the Relevant Error.
- 4) At approximately 15:56:56, the Credit Suisse Client contacted the Credit Suisse Representative and stated that it would accept the Relevant Error and that it would like the associated brokerage waived.
- 5) The Credit Suisse Representative's supervisor waived the brokerage and any further brokerage incurred by the Credit Suisse Client for the rest of the week, which amounted to a total of \$3,397.35 including GST.
- 6) The Relevant Error was then allocated to the Credit Suisse Client's Client Account.
- 7) The cost to the Credit Suisse Client of accepting the Relevant Error was \$24,660.
- 8) Neither the Credit Suisse Representative nor his supervisor completed an error report detailing the Relevant Error on 4 September 2012.

- 9) Credit Suisse's Compliance Division identified the Relevant Error, and the misconduct detailed above, on becoming aware of the waiver of brokerage by means of a routine surveillance of telephone calls.
- 10) Credit Suisse's Compliance Division then conducted a comprehensive investigation of the incident, including interviews with the Credit Suisse Representative and his supervisor.
- 11) As a result of this investigation, Credit Suisse made a timely and comprehensive report of the incident to ASIC.

By reason of the Relevant Error on 4 September 2012, Credit Suisse:

- Failed to maintain a separate record of the Relevant Error from the date of that Trade, being 4 September 2012;
- Offered and allocated the Relevant Error to the Credit Suisse Client in circumstances where that Trade had not been obtained under instructions previously obtained from the Credit Suisse Client; and
- Acted in a manner which had a detrimental effect on the Credit Suisse Client's best interests, that being a quantifiable loss of \$24,660 on the Credit Suisse Client's acceptance of the Relevant Error.

As a result, the MDP has reasonable grounds to believe that Credit Suisse has contravened MIR 2.2.4(3), MIR 3.1.17(1) and MIR 3.1.13(1)(b) 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 Credit Suisse to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 2.2.4(3), is \$100,000;
- by reason of contravening MIR 3.1.17(1), is \$1,000,000;
- by reason of contravening MIR 3.1.13(1)(b), is \$100,000.

The maximum pecuniary penalty that may be payable by Credit Suisse under an infringement notice given pursuant to subsection 798K(2) of the Act:

- by reason of allegedly contravening MIR 2.2.4(3), is \$60,000;
- by reason of allegedly contravening MIR 3.1.17(1), is \$600,000;
- by reason of allegedly contravening MIR 3.1.13(1)(b), is \$60,000.

Penalty under the Infringement Notice

The penalties imposed by the MDP for each of the alleged contraventions of subsection 798H(1) of the Act are as follows:

- MIR 2.2.4(3) – \$10,000;
- MIR 3.1.17(1) – \$100,000;
- MIR 3.1.13(1)(b) – \$20,000.

However, the MDP considered it appropriate in this matter, to adjust the total sum of the separate penalties as set out above, to ensure that the final penalty payable is just, and appropriate and not excessive, having regard to the totality of the conduct, and other relevant factors. In doing so, the MDP had regard to paragraphs RG 216.125 and RG 216.126 of ASIC Regulatory Guide 216—*Markets Disciplinary Panel* ("RG 216") and applied the totality principle in arriving at the appropriate pecuniary penalty to apply in this matter.

On this basis, and in accordance with subparagraphs 7.2A.06(g)(i) and (ii) and subregulation 7.2A.07(2) of the Regulations, for the alleged contraventions of subsection 798H(1) of the Act, the MDP imposed a total pecuniary penalty of \$88,400, as follows:

- MIR 2.2.4(3) – \$6,800;
- MIR 3.1.17(1) – \$68,000;
- MIR 3.1.13(1)(b) – \$13,600.

Therefore, the total penalty that Credit Suisse must pay to the Commonwealth is **\$88,400**, being the penalty payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act. __

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 RG 216, and noted in particular the following:

- That the remedies applied should promote market integrity along with confident and informed participation of investors in financial markets;
- MIR 3.1.17(1) imposes a mandatory obligation and is directed at ensuring that Market Participants treat Clients fairly, by not seeking to use Client Accounts to avoid a financial detriment or gain a financial benefit;
- MIR 3.1.13(1)(b) also imposes a mandatory obligation and is similarly directed at ensuring that Market Participants treat Clients fairly, by acting in a manner not detrimental to the Client's best interests;
- These two rules are fundamental to ensuring the fairness of the market and to promoting confidence in the integrity of the Market. The failure to comply with either of these rules risks undermining market integrity because it poses a risk to public confidence in the Market;
- MIR 2.2.4(3) imposes a mandatory obligation and is directed at ensuring that Market Participants maintain audit trails, allowing Error Trades to be tracked and action to be taken with respect to those Trades in the maintenance of market integrity;

- The misconduct had the potential to damage confidence in, and the reputation and integrity of, the Market;
- The misconduct of offering and allocating the Relevant Error to the Credit Suisse Client in circumstances where that Trade had not been obtained under instructions previously obtained from the Credit Suisse Client, was deliberate on the part of the Credit Suisse Representative and his supervisor;
- The breaches formed an isolated incident, arising out of a single course of conduct;
- The misconduct initially allowed Credit Suisse to avoid a loss of \$24,660 and caused the Credit Suisse Client to suffer a financial detriment of \$24,660. Ultimately, however, Credit Suisse gained no financial benefit from the breach, having later reimbursed the Credit Suisse Client in full;
- Credit Suisse had internal procedures with respect to Error Trades and post-allocation of Trades, but these procedures were not followed. Credit Suisse had also conducted training sessions relating to its mandatory obligations with respect to Error Trades and post-allocation of Trades which were attended by the two Employees involved in the misconduct;
- Credit Suisse had no pattern or history of non-compliance with the market integrity rules, and had a corporate culture conducive to compliance;
- Credit Suisse had in place procedures for detecting breaches of the market integrity rules, and these procedures operated to detect the breaches;
- In the prevention of recurrence of the misconduct, Credit Suisse had taken formal disciplinary action against the two Employees involved in the misconduct, including formal final warnings, zero bonuses for calendar year 2012, and no opportunity for promotion in 2013;
- Credit Suisse informed ASIC of the breaches in a timely and comprehensive manner;
- Credit Suisse conducted a comprehensive internal investigation, the results of which were provided to ASIC, which significantly expedited ASIC's investigation;
- Credit Suisse cooperated with ASIC throughout its investigation and did not dispute any material facts; and
- Credit Suisse agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

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 contraventions.

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

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 contraventions of subsection 798H(1) of the Act are discharged;
- (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 contraventions 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 Credit Suisse for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act;
- (d) Credit Suisse is not taken to have admitted guilt or liability in relation to the alleged contraventions; 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: 26 June 2014

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

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

"Client" means in relation to a Market Participant, any person, partnership or Corporation on behalf of whom the Market Participant enters, Acquires or Disposes of a Futures Contract or Option Contract, or on whose behalf the Market Participant proposes to enter, Acquire or Dispose of a Futures Contract or Option Contract or from whom the Market Participant accepts instructions to enter, Acquire or Dispose of Futures Contracts or Option Contracts.

"Client Account" means an account of a Client.

"Contract" means a contract entered, Acquired or Disposed of on the Market or capable of being entered, Acquired, or Disposed of on the Market.

"Employee" in relation to a Market Participant includes a Director, Employee, officer, agent, Representative, consultant or adviser of that Market Participant, or an independent contractor who acts for or by arrangement with a Market Participant.

"Error Trade" means a Trade transacted in error.

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

"Market Operator" means Australian Securities Exchange Limited (ACN 000 943 377).

"Market Operating Rules" means the Operating Rules of the Market.

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

"Operating Rules" has the meaning given by section 761A of the Corporations Act.

"Order" means an instruction to enter into a Contract, or an instruction to amend or cancel a prior instruction to enter into a Contract.

"Representative" has the meaning given by section 910A of the Corporations Act.

"Rules" means the ASIC Market Integrity Rules (ASX 24 Market) 2010.

"Trade" and similar expressions means "trade" as defined in section 9 of the Corporations Act.