



ASIC

Australian Securities &
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Contents

Markets Disciplinary Panel Infringement Notice

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

Euroz Securities Limited
ACN 089 314 983
Level 18 Alluvion
58 Mounts Bay Road
Perth, WA, 6000

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

- (i) Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$20,000**.

This infringement notice is given on 31 October 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP8020/12.

Alleged contravention and penalties, sanctions etc

Euroz was a Trading 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.

Euroz is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Market Integrity Rule 6.6.1 of the *ASIC Market Integrity Rules (ASX Market) 2010* ("MIR 6.6.1"), which provides:

"A Trading Participant must not effect a Special Crossing of any Cash Market Products (excluding Warrants) of an Issuer, on behalf of that Issuer during the term of a buy-back offer conducted On-Market by that Issuer."

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

- (i) On 15 August 2011, iiNet Limited ("iiNet") issued a Company Announcement advising that it intended to implement an On-Market Buy-back of up to 7,608,455 of its fully paid ordinary shares, namely IIN, and that it had appointed Euroz to act as broker to the Buy-back;
- (ii) On 6 September 2011, Euroz received an instruction to sell 446,791 IIN on behalf of one of its clients and subsequently received an instruction from iiNet to purchase the 446,791 IIN pursuant to its On-Market buy-back; and
- (iii) Euroz executed these instructions via a Block Special Crossing for 446,791 IIN at \$2.40 ("the Relevant Special Crossing") which was reported to the Trading Platform at or about 14:42:41 EST on 6 September 2011.

By reason of Euroz effecting a Special Crossing of 446,791 IIN on 6 September 2011 on behalf of the Issuer of IIN, iiNet, pursuant to the buy-back of IIN which was being conducted On-Market by iiNet, the Markets Disciplinary Panel has reasonable grounds to believe that Euroz has contravened MIR 6.6.1 and thereby contravened subsection 798H(1) of the Act.

It should be noted that the purpose of MIR 6.6.1 appears to be to:

- (a) ensure fairness and transparency during the course of an on-market buy-back; and
- (b) minimize the risk that a Market Participant will cause or be involved in its client effecting a capital reduction in contravention of section 256D of the Act.

A capital reduction resulting from the cancellation of shares bought back On-Market is prohibited under that section unless the buy-back results from an order made in the ordinary course of trading on a relevant market: see section 257B(6). A buy-back by way of a Special Crossing is not of this kind.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Euroz to pay for contravening the market integrity rule that Euroz is alleged to have contravened is \$100,000. The maximum penalty that may be payable under an infringement notice for an alleged contravention of that rule is \$60,000.

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 Euroz must pay to the Commonwealth is \$20,000.

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 :

- The execution of a Special Crossing during and pursuant to an On-Market buy-back by the Issuer, risks undermining the principles of fairness and transparency and so operates as a risk to public confidence in the Market;
- Euroz did not have policies in place relating to the execution of an On-Market buy-back at the time it executed the Relevant Special Crossing;
- Euroz self-reported to ASIC;
- Euroz co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Euroz has taken remedial action to prevent recurrence including by notifying staff of MIR 6.6.1 after the alleged contravention;
- It is accepted by the MDP that the breach was inadvertent and was an isolated incident;
- Euroz has no recorded history of non-compliance with the Market Integrity Rules; and
- Euroz agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

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

If Euroz 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.

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

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

Dated: 31 October 2012

Note: Members of ASIC's Market 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.