



ASIC

Australian Securities &
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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Macquarie Bank 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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: Macquarie Bank Limited
Level 3
25 National Circuit
FORREST ACT 2603

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Macquarie Bank Limited ACN 008 583 542 ("Macquarie") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Macquarie must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$175,000**.

This infringement notice is given on 15 November 2013.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP17342/13.

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

Macquarie 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.

Macquarie is alleged to have contravened subsection 798H(1) of the Act by reason of twice contravening Rule 2.2.6(a) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 2.2.6(a)"), which relevantly provides:

"A Market Participant, who holds Client monies, must comply with the following:

(a) Client money

(i) All money received by the Market Participant from its Clients or by a person acting on behalf of the Client under these Rules or the Market Operating Rules must be deposited in an

*account maintained by the Market Participant and designated as a Clients' segregated account.
...."*

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

- 1) On 3 October 2012, Macquarie re-opened a Client Account ("Account B") for a Client ("Macquarie Client"). Macquarie failed to designate Account B as a segregated Client Account.
- 2) On 8 October 2012, Macquarie set up further Client Accounts for the Macquarie Client by cloning Account B. The cloning of Account B resulted in the establishment of another Client Account ("Account A") for the Macquarie Client. Macquarie failed to designate Account A as a segregated Client Account.
- 3) On 10 October 2012, Macquarie received \$14 million from the Macquarie Client intended for Account A, but which was deposited by Macquarie into the Macquarie non-segregated House Account ("Contravention 1").
- 4) On 11 October 2012, Macquarie received \$9 million from the Macquarie Client intended for Account B, but which was deposited by Macquarie into the Macquarie non-segregated House Account ("Contravention 2").
- 5) On 12 October 2012, Macquarie's failure to designate Account A as a segregated Client Account was identified and corrected. Notwithstanding this, Macquarie made no enquires to establish whether the Macquarie Client's money had been affected by the failure to designate Account A as a segregated Client Account on 8 October 2012.
- 6) On 15 October 2012, Macquarie's failure to designate Account B as a segregated Client Account was identified and corrected. Notwithstanding this, Macquarie made no enquires to establish whether the Macquarie Client's money had been affected by the failure to designate Account B as a segregated Client Account on 3 October 2012.
- 7) On 17 October 2012, Macquarie's futures division enquired with Macquarie's finance division about a \$23 million movement from non-segregated House Accounts to segregated Client Accounts in the futures balance sheet. The explanation provided was that the error resulted from the redesignation of Account A and Account B to segregated Client Accounts on 12 and 15 October 2012 respectively. Notwithstanding this, Macquarie made no enquiries to establish whether the Macquarie Client's money had been affected by the failure to designate Account B and Account A as segregated Client Accounts on 3 and 8 October 2012 respectively.
- 8) On 25 October 2012, \$23 million (comprising the \$14 million and \$9 million received by Macquarie from the Macquarie Client on 10 and 11 October 2012 respectively) was moved from Macquarie's House Account into the Macquarie Client's segregated Client Account after a discrepancy was noted by a Macquarie delegate and escalated to senior management.

By reason of Macquarie's failure to deposit monies received from the Macquarie Client into Client Accounts maintained by Macquarie and designated as a Clients' segregated account on 10 and 11 October 2012 respectively, the MDP has reasonable grounds to believe that Macquarie has twice contravened MIR 2.2.6(a) and thereby twice contravened subsection 798H(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Macquarie to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 2.2.6(a), is \$1,000,000.

The maximum pecuniary penalty that may be payable by Macquarie under an infringement notice given pursuant to subsection 798K(2) of the Act, is \$600,000.

Penalty under the Infringement Notice

The penalties payable under this infringement notice for the two alleged contraventions of subsection 798H(1) of the Act are as follows:

- MIR 2.2.6(a) – \$87,500 (Contravention 1);
- MIR 2.2.6(a) – \$87,500 (Contravention 2).

Therefore, the total penalty that Macquarie must pay to the Commonwealth is **\$175,000**.

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 2.2.6(a) is aimed at ensuring the segregation of Client monies from that of the Market Participant, with a strict, mandatory obligation on Market Participants to deposit and maintain Client monies in Client Accounts designated as segregated Client Accounts;
- Macquarie's failure to deposit monies received from the Macquarie Client into Client Accounts maintained by Macquarie and designated as segregated Client Accounts, on two separate occasions, was negligent on the part of Macquarie;
- The misconduct transpired over an unacceptable length of time. Macquarie rectified the breaches around 10 Business Days after they were first identified;
- From at least 12 and 15 October 2012 respectively, Macquarie was aware of its failure to designate Account A and Account B as segregated Client Accounts. Despite this, it was not until 25 October 2012 after a discrepancy was noted by a Macquarie delegate and escalated to senior management, that Macquarie moved the Macquarie Client's \$23 million from Macquarie's House Account into the Macquarie Client's segregated Client Account. As a result, the breaches were indicative of a systemic compliance failure in this

instance, regarding the systems and controls Macquarie had in place to identify, escalate and rectify the error in relation to the Macquarie Client's money, and not as a whole in relation to its handling of Client funds;

- The potential loss to the Macquarie Client, in the event of Macquarie's insolvency, was real and significant for a period of around 10 Business Days;
- The MDP reiterated that it considers any breaches of the Rules relating to Client money segregation to be particularly serious in nature;
- The MDP emphasised the importance of all relevant Market Participant Employees appreciating the Rules relating to the handling of Client monies;
- One course of conduct resulted in the two breaches of MIR 2.2.6(a);
- Macquarie notified the breaches to ASIC;
- Macquarie took remedial steps in response to the breaches including implementing a range of enhanced detective and preventative compliance initiatives to eliminate future occurrences of a similar breach. Macquarie engaged external parties to assist in developing a more robust framework for its handling of Client monies, and liaised with ASIC to ensure its Client money processes and procedures were in accordance with regulatory obligations;
- Macquarie had a minimal history of non-compliance including no previous contraventions found against it by the MDP;
- Macquarie co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Macquarie agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Macquarie 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 Macquarie 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 Macquarie 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) Macquarie is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Macquarie 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: 15 November 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

"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.

"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.

"House Account" means any account other than a Client Account.

"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.

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