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Monday 12 December 2011

MDP CIRCULAR 2011- 02

## DISCIPLINARY MATTER – AUSTOCK SECURITIES LTD

Austock Securities Ltd ("Austock") has paid a penalty of **\$30,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel ("the MDP").

### Background and circumstances

Austock is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* by reason of contravening market integrity 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."*

At 10:41:00 on 30 March 2011, Austock entered an order on the Trading Platform to sell 106,761 fully paid, ordinary shares in Newcrest Mining Limited, having ASX Code "NCM", at \$0.12 on behalf of a client ("the Order").

The Order was erroneous in that Austock intended to sell 106,761 shares in the fully paid ordinary shares of Engenco Limited, having ASX Code "EGN", at \$0.12 on behalf of a client.

The Order traded immediately and in its entirety causing the price of NCM to fall \$2.18 from \$39.68 to \$37.50, or 5.5%. The Order resulted in 98 Market transactions with a total value of \$4,139,329.07 and involved 22 Market Participants as counterparties on the buy side. Trade cancellations were made.

Austock elected not to contest the alleged breach.

### Relevant factors

In determining the appropriate penalty in this matter, the MDP took into account all relevant guidance in ASIC Regulatory Guide 216 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 misconduct had the potential to damage the reputation and integrity of the market;
- Austock had an alert procedure in place. However, it is questionable whether the message generated was helpful as it did not accurately reflect the circumstances of the Order;

- Although the Designated Trading Representative ("the DTR") involved in this matter was an experienced DTR with no history of previous errors, he failed in this case to perform this function to the requisite high standard, although the MDP considers that he was not assisted by the content of the warning received;
- Austock cooperated with ASIC throughout its investigation and did not dispute any material facts;
- Austock agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- This was an isolated incident;
- Austock has no recorded history of non-compliance with the Market Integrity Rules or the prior ASX Market Rules;
- An important aspect of the role of the DTR is to review and prevent the entry of orders into the trading platform that could result in a market that is not fair or orderly. This is a critical measure in maintaining the integrity of the market.

### **The Markets Disciplinary Panel**

The MDP is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the regulations.

### **Additional regulatory information**

Pursuant to subparagraph 7.2A.15(4)(b)(i) and (ii) of the Corporations Regulations 2001, Austock has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Austock is not taken to have contravened subsection 798H(1) of the Corporations Act.

Further information on market integrity infringement notices, the market integrity rules or the MDP is available in Regulatory Guide 216 – *Markets Disciplinary Panel* and Regulatory Guide 225 – *Markets Disciplinary Panel practices and procedures* or at <http://www.asic.gov.au> under "markets-supervision", "markets –market integrity rules" and "Markets Disciplinary Panel".