

DISCIPLINARY MATTER – NOMURA AUSTRALIA LIMITED

Nomura Australia Ltd (Nomura) has paid a penalty of **\$30,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel, for the entry of two orders to sell the security, Alumina Limited (AWC) on 18 March, 2011, that allegedly resulted in the market for AWC not being both fair and orderly.

Background and circumstances

Nomura was alleged by ASIC to have contravened subsection 798H(1) of the Act 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.”

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

- (1) At 10:26:46 on the 18 March 2011, a facilitation trader at Nomura (**the Trader**) sought to enter what Nomura calls a 'parent order', using the Iress execution platform called "IOS Plus", to sell 1 million AWC at \$2.16. A parent order is an order entered by Nomura into IOS that is not transmitted directly on the market and which is subsequently 'sliced' by Nomura into 'child' orders which are entered into the market;
- (2) Prior to this order, the market for AWC was \$2.22/\$2.23/\$2.25 (Bid/Ask/Last). A total of 88,513 AWC were on bid at \$2.22;
- (3) Instead of entering the parent order as described, the Trader in fact entered an order onto the market to sell 1 million AWC at \$2.16 (**Order 1**);
- (4) Order 1 traded immediately, moving the price of AWC from \$2.22 down to \$2.16, a 2.7% decrease and resulting in a Bid/Ask/last of \$2.16/\$2.23/\$2.16. At 10:27:33 the market in AWC was \$2.19/2.20/\$2.20 (Bid/Ask/Last). This remained the case until entry of the second order, as follows:-
 - (a) At 10:27:33, less than one minute after the entry of Order 1, the Trader entered a second order to sell 1 million AWC at \$2.00 (**Order 2**);
 - (b) Order 2 was entered by the Trader in error when he did not see Order 1 appear in the system as a parent order. He was under the mistaken belief that Order 1 had not been registered in IOS, when in fact, Order 1 had been entered onto the market and had traded, as set out above;

(c) Order 2 traded immediately and moved the price of AWC from \$2.20 to \$2.00, a 9% decrease resulting in a Bid/Ask/Last of \$2.00/\$2.20/\$2.00;

(d) At 10:30:00, approximately two and half minutes after the second error, the AWC price had recovered to \$2.19/\$2.20/\$2.20 (Bid/Ask/Last).

Relevant factors

Factors that were considered in determining the penalty and remedy to be applied in relation to the alleged breach included:

- The misconduct had the potential to damage the reputation and integrity of the market;
- The conduct appears to have been inadvertent on the part of the Nomura Trader, rather than deliberate or reckless. Whilst the Relevant Orders were entered in error, the Trader failed to enter them with appropriate care. In particular, he entered Order 2 without first having taken reasonable steps to ascertain whether Order 1 had registered in IOS;
- Nomura did not have any specific controls in place to prevent an error such as the one in this matter;
- On the business day following the incident, Nomura implemented a number of facilitation trading prompts to prevent a recurrence of an incident such as this.
- Nomura co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Nomura agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- This was an isolated incident;
- Nomura has no recorded history of non-compliance with the Market Integrity Rules or the prior ASX Market Rules.

The Markets Disciplinary Panel ("the MDP")

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, Nomura has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Nomura 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".