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28 May 2012

MDP CIRCULAR 2012 - 02

## **DISCIPLINARY MATTER – COMMONWEALTH SECURITIES LTD**

Commonwealth Securities Ltd ("CommSec") has paid a penalty of **\$35,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel.

### **Background and circumstances**

CommSec is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("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, the Markets Disciplinary Panel was satisfied that:-

- (1) At 10:23:49 on 10 August 2011, CommSec entered a Priority Crossing for 200,000 shares in OZ Minerals Limited ACN 005 482 824, having ASX Code "OZL" at \$1.545 on the Trading Platform operated by the ASX ("the Order").
- (2) The Order was erroneous in that CommSec intended to enter a Priority Crossing for 200,000 fully paid ordinary shares of Duet Group, having ASX Code "DUE", at \$1.545.
- (3) The Order on the Trading Platform consisted of:
  - (a) a Bid to buy one fully paid, ordinary share in OZL at \$1.545 ("the Bid"); and
  - (b) an Ask to sell 200,000 fully paid ordinary shares in OZL at \$1.545 ("the Ask").
- (4) The CommSec Designated Trading Representative (DTR) received alerts in CommSec's order management system immediately prior to the entry of the Order on the Trading Platform. Despite receiving these alerts, the DTR entered the Order on the Trading Platform.
- (5) The Order immediately transacted on the Trading Platform as follows:
  - (a) The Ask transacted with the 169,991 OZL in the Market at prices between \$11.88 and \$5.40 and resulted in 152 Cash Market Transactions;
  - (b) A crossing market was then established at \$1.545 and the Bid then crossed with the Ask on the market with the residual 30,009 OZL at \$1.545.

- (6) The Order resulted in the traded price of OZL to fall \$10.33 from \$11.88 to \$1.545 or 87%. The Order resulted in 153 Market Transactions and involved 15 Trading Participants as counterparties on the buy side. Trade cancellations were made.

By reason of its entry of the Order on 10 August 2011, the Markets Disciplinary Panel has reasonable grounds to believe that CommSec has contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the Act.

### **Relevant factors**

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:

- 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;
- CommSec had an alert procedure in place;
- Although 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;
- CommSec co-operated with ASIC throughout its investigation and did not dispute any material facts;
- CommSec agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- This was an isolated incident;
- CommSec has no recorded history of non-compliance with the Market Integrity Rules and has two recorded ASX Disciplinary Tribunal determinations of 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, including having proper regard to any internal alerts generated. This is a critical measure in maintaining the integrity of the market.

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