



27 September 2012

MDP CIRCULAR 2012- 05

## DISCIPLINARY MATTER – CREDIT SUISSE EQUITIES (AUSTRALIA) LIMITED

Credit Suisse Equities (Australia) Limited ("Credit Suisse") has paid a penalty of **\$52,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel.

### Background and circumstances

Credit Suisse is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* (the Act) by reason of contravening market integrity rule 5.6.1 of the *ASIC Market Integrity Rules (ASX Market) 2010* ("MIR 5.6.1"), which provides:

*"A Market Participant which uses a system for Automated Order Processing must at all times:*

- (a) have appropriate automated filters, in relation to Automated Order Processing; and*
- (b) ensure that such use does not interfere with:*
  - (i) the efficiency and integrity of the Market; or*
  - (ii) the proper functioning of any Trading Platform."*

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

1. At 13:03 on 20 May 2011, a client of Credit Suisse erroneously initiated a Credit Suisse strategy with an instruction to purchase 942,517 ordinary shares in Celamin Holdings NL, having ASX code 'CNL' ("CNL"), ("the Relevant Order").
2. The relevant Credit Suisse strategy initiated by the client worked the Relevant Order by dynamically varying its participation rate ("Trading System 1").
3. The client intended to enter the instruction into another trading system ("Trading System 2") instead of Trading System 1. Trading System 1 and Trading System 2 were both trading strategies within Credit Suisse's Automated Order Processing System ("AOP").
4. The Relevant Order was entered into Trading System 1 without specifying a maximum participation rate. Trading System 1 therefore, aimed to complete the Relevant Order by market close on 20 May 2011.
5. The Relevant Order was then initiated by the Trading System 1 strategy by automatically generating orders by slicing the Relevant Order into a number of limit orders which resulted in:
  - (a) Credit Suisse by its AOP entering 1,272 Bids and amended Bids in CNL at prices between \$0.425 and \$0.78 onto the Market ("the CNL Bids"); and

- (b) The CNL Bids transacted between 13:03:19 and 15:02:53 on 20 May 2011 ("the Relevant Period"), progressively increasing the price of CNL.
6. The entry of the CNL Bids into the Market during the Relevant Period resulted in:
  - (a) Credit Suisse purchasing 458,199 CNL in 39 Market Transactions, at prices from \$0.425 to \$0.780 inclusive;
  - (b) fifteen price increases, or 71 % of all price increases in CNL during the Relevant Period; and
  - (c) a 83.5% increase in the price of CNL from \$0.425 to \$0.780, that corresponded with Credit Suisse's transactions between 13:03:20 and 15:01:02 respectively.
7. At approximately 15:14, Credit Suisse became aware of a number of its system alerts in CNL and immediately de-activated the Relevant Order.
8. No AOP alerts were triggered immediately prior to the entry on the Trading Platform of any of the CNL Bids.
9. Credit Suisse's AOP filters were inappropriate in that they were unable to prevent Trading System 1, operating with no maximum participant rate, from creating price distortion in relation to the market in CNL.

By reason of Credit Suisse's placement on the ASX Market of the CNL Bids on 20 May 2011, the Markets Disciplinary Panel has reasonable grounds to believe that Credit Suisse has contravened MIR 5.6.1 and thereby contravened Section 798(H)(1) of the Act.

### **Relevant factors**

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

- MIR 5.6.1 is aimed at ensuring a fair, orderly and transparent trading system, with a strict obligation imposed on Market Participants which use systems for AOP, to ensure that at all times they have appropriate automated filters and that their AOP systems do not interfere with the efficiency and integrity of the Market.
- The conduct had the potential to damage the efficiency and integrity of the ASX Market.
- Credit Suisse self-reported to ASIC;
- Credit Suisse co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Credit Suisse agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- Credit Suisse took remedial action to prevent recurrence;

- It is accepted by the MDP that the breach was an isolated incident ; and
- Credit Suisse has no recorded history of non-compliance with the Market Integrity 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, Credit Suisse has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Credit Suisse 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".