19 November 2012 **MDP CIRCULAR 2012- 07**

DISCIPLINARY MATTER – J.P. Morgan Securities Australia Limited

J.P. Morgan Securities Australia Limited ("J.P. Morgan") has paid a penalty of **$30,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel.

Background and circumstances

J.P. Morgan is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("the Act") by reason of contravening Rule 6.6.1 of the *ASIC Market Integrity Rules (ASX Market) 2010* ("MIR 6.6.1"), which provides:

> "*A Trading Participant must not effect a Special Crossing of any Cash Market Products (excluding Warrants) of an Issuer, on behalf of that Issuer during the term of a buy-back offer conducted On-Market by that Issuer.*"

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

(i) On 31 August 2011, J. P Morgan's client, NIB Holdings Limited ("NIB"), issued a Company Announcement advising that it intended to implement the fourth tranche of an On-Market Buy-back of its fully paid ordinary shares, (stock code "NHF"), and that J. P. Morgan would act as the broker in conducting the buy-back ("NHF Buy-Back").

(ii) On 24 February 2012, J. P. Morgan received instructions from an institutional client to sell a total of 8 million NHF and instructions from NIB, the Issuer of NHF, to buy 8 million NHF, pursuant to the NHF Buy-back. J. P. Morgan executed the instructions via a Special Crossing for 8 million NHF at $1.46 per NHF ("Special Crossing 1"), which was reported to the Trading Platform by J. P. Morgan at 10:10:23 AEDST on 24 February 2012.

(iii) On 28 February 2012, J. P. Morgan, received instructions from two clients to sell a total of 5 million NHF and instructions from NIB to purchase 5 million NHF, pursuant to the NHF Buy-back. The instructions were executed via a Special Crossing for 5 million NHF at $1.46 per NHF ("Special Crossing 2"), which was reported to the Trading Platform by J. P. Morgan at 11:06:48 AEDST on 28 February 2012.

By reason of J. P. Morgan effecting Special Crossing 1 and Special Crossing 2 on behalf of NIB, pursuant to the buy-back of NHF which was being conducted On-Market, the Markets Disciplinary Panel has reasonable grounds to believe that J. P. Morgan contravened MIR 6.6.1 on 24 February 2012 and 28 February 2012, and thereby contravened subsection 798H(1) of the Act on those dates.

The purpose of MIR 6.6.1 is to:

(a) ensure fairness and transparency during the course of an On-Market buy-back; and

(b) minimize the risk that a Market Participant will cause or be involved in its client effecting a capital reduction in contravention of section 256D of the Act.

A capital reduction resulting from the cancellation of shares bought back On-Market is prohibited under that section unless the buy-back results from an order made in the ordinary course of trading on a relevant market: see section 257B(6). A buy-back by way of a Special Crossing is not of this kind.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order J. P. Morgan to pay for contravening MIR 6.6.1 is $100,000. The maximum penalty that may be payable under an infringement notice for an alleged contravention of that rule is $60,000.

Penalty under the Infringement Notice

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

- Special Crossing 1 on 24 February 2012 — **$25,000**; and
- Special Crossing 2 on 28 February 2012 — **$5,000**.

The total penalty that J. P. Morgan must pay to the Commonwealth is **$30,000**.

Relevant factors

In determining the appropriate penalty in this matter, the Markets Disciplinary Panel took into account all relevant guidance in ASIC Regulatory Guide 216 and noted in particular the following:

- The execution of a Special Crossing during and pursuant to an On-Market buy-back by the Issuer, risks undermining the principles of fairness and transparency and so operates as a risk to public confidence in the Market;
- There were two Special Crossings, each in apparent breach of MIR 6.6.1. Special Crossing 2 being a repetition of Special Crossing 1 and substantially part of the same course of conduct;
- It is accepted by the MDP that the breaches were inadvertent and a result of human error;
- The J. P. Morgan Designated Trading Representative brought the matter to the attention of J. P. Morgan's Equity Compliance team when he realised his error;
- J. P. Morgan had an internal policy that referred to MIR 6.6.1 and upon becoming aware of the contraventions, immediately took an extensive range of remedial action to prevent a recurrence of the incidents;

- J. P. Morgan has subsequently established a procedure whereby its Equity Compliance team is notified where J. P. Morgan is engaged in an On-Market buyback on behalf of an Issuer, the security will be added to a watchlist and daily reports will be generated identifying any Special Crossings effected by J. P. Morgan in those securities;

- J. P. Morgan did not self-report the alleged contravention to ASIC. J.P. Morgan believed the matter did not require reporting after conducting an investigation which had regard to the provisions of section 912D of the Corporations Act 2001;

- J. P. Morgan has no recorded history of non-compliance with the Market Integrity Rules;

- J. P. Morgan fully co-operated with ASIC throughout its investigation and did not dispute any material facts; and

- J. P. Morgan agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

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