



## Markets Disciplinary Panel

11 December 2012

MDP CIRCULAR 2012-09

### DISCIPLINARY MATTER – Euroz Securities Limited

Euroz Securities Limited ("Euroz") has paid a penalty of **\$20,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP") for effecting an Off-Market Special Crossing in the shares of an Issuer, iiNet Limited ("iiNet"), on behalf of that Issuer, during the term of an On-Market Buy-back offer being conducted by that Issuer.

#### Background and circumstances

Euroz is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("the Act") by reason of contravening Market Integrity 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 MDP was satisfied that:

- (i) On 15 August 2011, iiNet issued a Company Announcement advising that it intended to implement an On-Market Buy-back of up to 7,608,455 of its fully paid ordinary shares, namely IIN, and that it had appointed Euroz to act as broker to the Buy-back;
- (ii) On 6 September 2011, Euroz received an instruction to sell 446,791 IIN on behalf of one of its clients and subsequently received an instruction from iiNet to purchase the 446,791 IIN pursuant to its On-Market Buy-back; and
- (iii) Euroz executed these instructions via a Block Special Crossing for 446,791 IIN at \$2.40 ("the Relevant Special Crossing") which was reported to the Trading Platform at or about 14:42:41 EST on 6 September 2011.

By reason of Euroz effecting a Special Crossing of 446,791 IIN on 6 September 2011 on behalf of the iiNet, pursuant to the Buy-back of IIN which was being conducted On-Market by iiNet, the MDP had reasonable grounds to believe that Euroz contravened MIR 6.6.1 and thereby contravened subsection 798H(1) of the Act.

It should be noted that the purpose of MIR 6.6.1 appears to be to:

- (a) ensure fairness and transparency during the course of an On-Market Buy-back; and
- (b) minimise 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) of the Act. 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 Euroz to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 6.6.1, is \$100,000. The maximum pecuniary penalty that the MDP could require Euroz to pay under an infringement notice for an alleged contravention of MIR 6.6.1, 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 and therefore the total penalty that Euroz must pay to the Commonwealth, is **\$20,000**.

### **Relevant factors**

In determining the appropriate penalty in this matter, the MDP took into account all relevant guidance in ASIC Regulatory Guide 216 *Markets Disciplinary Panel* 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;
- Euroz did not have policies in place relating to the execution of an On-Market Buy-back at the time it executed the Relevant Special Crossing;
- Euroz self-reported to ASIC;
- Euroz co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Euroz undertook remedial action to prevent recurrence including by notifying staff of MIR 6.6.1 after the alleged contravention;
- It was accepted by the MDP that the breach was inadvertent and was an isolated incident;
- Euroz had no recorded history of non-compliance with the Market Integrity Rules; and
- Euroz agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

## **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 *Corporations Regulations 2001* ("the Regulations").

### **Additional regulatory information**

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