

DISCIPLINARY MATTER – Susquehanna Pacific Pty Ltd

Susquehanna Pacific Pty Ltd ("Susquehanna") has paid a penalty of **\$25,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP") for not having in place at all times, as required, an appropriate price filter in its Automated Order Processing ("AOP") system for Exchange Traded Funds ("ETFs"), and for not also ensuring that the use of such system did not interfere with the integrity of the Market.

Background and circumstances

Susquehanna 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 MDP was satisfied that:

- 1) On Thursday 17 November 2011, at approximately 18:00:00, the information technology ("IT") department of Susquehanna inadvertently disabled a price filter for its AOP system ETFs. The AOP system for ETFs was being upgraded when the ETF price filter was disabled.
- 2) The other instances of the AOP system which are used by Susquehanna to trade financial products other than ETFs were not rendered inoperative by the upgrade. All other automated filters within the AOP system for ETFs were also unaffected.
- 3) On Monday 21 November 2011, at 16:00:03, Susquehanna's Automated Quoting System miscalculated the price of fully paid units in SPDR MSCI Australia Select High Dividend Yield Fund ("SYI") and subsequently amended the price of an existing Order to sell 8,000 SYI from \$22.71 to \$0.046 ("the Relevant Order"). As the price filter for ETFs was inadvertently disabled, the Relevant Order was routed to the Trading Platform, despite being at a price which was significantly lower than the last traded price.
- 4) At 16:09:22, an order to buy 8,000 SYI at \$0.055 was entered into the trading platform by another market participant.

- 5) At 16:10:00, upon the open of the closing single price auction, the Relevant Order resulted in four Market Transactions for a total of 8,000 SYI at the buy price of \$0.055 and resulted in a decrease of the price of SYI from \$22.71 to \$0.055, being a 99.76% decrease.
- 6) At approximately 16:14:00 a Susquehanna Representative telephoned ASX Market Control and requested Trade Cancellations. The request was granted in accordance with ASX Operating Rule 3200 at 16.27:00 with an ASX Circular confirming the Trade Cancellations being released at approximately 16:38:00.
- 7) At approximately 17:00:00, the ETF price filter had been reactivated by Susquehanna IT staff.

Accordingly, as a result of the disabling of a filter in its AOP system for ETF trading on 17 November 2011, which subsequently resulted in a 99.76% price decrease caused by the Relevant Order on 21 November 2011, the MDP had reasonable grounds to believe that Susquehanna contravened MIR 5.6.1 and thereby contravened subsection 798H(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Susquehanna to pay for contravening subsection 798H(1) of the Act by reasoning of contravening MIR 5.6.1, is \$1,000,000. The maximum pecuniary penalty that the MDP could require Susquehanna to pay under an infringement notice for an alleged contravention of MIR 5.6.1 is \$600,000.

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 Susquehanna must pay to the Commonwealth, is **\$25,000**.

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:

- 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 was inadvertent on the part of Susquehanna, rather than deliberate or reckless;
- The alleged breach was an isolated incident that resulted from the ETF price filter being inadvertently disabled;

- Market impact caused by the alleged contravention was minimal and there were no follow on trades;
- Susquehanna did not derive any actual benefit from the alleged contravention of MIR 5.6.1. However, the alleged breach had the potential to damage third parties as there was a contribution by Susquehanna to a closing price for the ETF for a 17 minute period which had the potential to damage public confidence in the SYI market, especially given closing prices are an important reference price;
- Susquehanna has co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Susquehanna contacted the ASX Market Control and sought cancellation of the trades at approximately 16:14:00 and the ASX cancelled the trades at 16:27:00 with an ASX Circular confirming the Trade Cancellations being released at approximately 16:38:00. At approximately 17:00:00 Susquehanna had identified the inoperative filter and rectified the issue by re-activating the appropriate filter;
- Susquehanna agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;
- Susquehanna has no recorded history of non-compliance with the market integrity rules or the prior ASX Market Rules;
- Susquehanna undertook remedial measures to prevent a recurrence of the alleged breach including:
 - revising and updating its Compliance Plan;
 - implementing additional policies and procedures in relation to AOP connectivity, AOP filter parameters, changes to filter parameters and monitoring indicative prices of ETFs; and
 - providing training to all relevant staff in relation to its revised policies and procedures.

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