

DISCIPLINARY MATTER – Credit Suisse Equities (Australia) Limited

Credit Suisse Equities (Australia) Limited ("Credit Suisse") has paid a penalty of **\$95,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for not having in place adequate organisational and technical resources for its Automated Order Processing ("AOP") system to account for corporate actions, which interfered with the efficiency and integrity of the Market; and resulted in a market for a stock not being both fair and orderly.

Background and circumstances

Credit Suisse is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Act") by reason of contravening Rule 5.6.3 and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.3 and MIR 5.9.1").

MIR 5.6.3 relevantly provides:

"A Trading Participant which uses its system for Automated Order Processing must ensure that the system has in place:

(a) organisational and technical resources, including having appropriate automated filters, filter parameters and processes to record any changes to the filters or filter parameters, to enable Trading Messages to be submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform;"

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MIR 5.9.1 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 MDP was satisfied that:

- 1) On 7 November 2011, at approximately 10:00am, a client of Credit Suisse ("Client") entered an Order to sell 2,948,931 ordinary shares in Hastie Group Limited ("Hastie") – having at the time ASX code ("HSTDA") – at a limit price of \$0.315, via Credit Suisse's AOP system ("Relevant Order").

- 2) The Client did not take into account that as of 7 November 2011, Hastie would be trading on a deferred settlement basis due to a 10 to 1 share consolidation ("Reconstruction"), despite the ASX code being temporarily changed from HST to HSTDA to reflect the Reconstruction.
- 3) On 7 November 2011, at approximately 10:04am on behalf of the Client, Credit Suisse via its AOP system submitted into the ASX Trading Platform part of the Relevant Order being an Order to sell 1,616 HSTDA – creating a transaction value of approximately \$824 on execution.
- 4) The subsequent part trading of the Relevant Order at a price of \$0.51 ("Relevant Price") created a \$0.47 or 48% decrease from the Reconstruction adjusted last traded price of \$0.98. The Relevant Price set the official open and low of the Trading Day.
- 5) The Relevant Order did not generate any price based AOP alerts, despite the deviation from the Reconstruction adjusted last traded price, due to the following:
 - (a) Credit Suisse's maintenance work on its AOP system on the weekend of 5 November 2011, incorrectly included a mapping table that converted market data information for HSTDA to HST;
 - (b) when Credit Suisse's automated filters were unable to conduct price limit checks because there was no reference price for HSTDA, they issued a technical error; and
 - (c) despite the technical error, Credit Suisse's AOP system incorrectly submitted part of the Relevant Order to the ASX Trading Platform due to not having appropriate automated filters.
- 6) Credit Suisse became aware of the executed part of the Relevant Order when contacted by ASIC on 7 November 2011, at approximately 11:30am. Around 90 minutes after contact from ASIC, at approximately 1:00pm, Credit Suisse contacted ASX Market Control to request cancellation of the executed part of the Relevant Order, however cancellation was denied due to the length of time between execution and request for cancellation not being in compliance with Procedure 3210 of the ASX Operating Rules Procedures.

By reason of Credit Suisse's part entry of the Relevant Order into the ASX Trading Platform on 7 November 2011, the MDP had reasonable grounds to believe that Credit Suisse contravened MIR 5.6.3 and 5.9.1, and thereby contravened subsection 798H(1) of the Act which requires compliance with the market integrity rules.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Credit Suisse to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 5.6.3, is \$1,000,000; and
- by reason of contravening MIR 5.9.1, is \$1,000,000.

The maximum pecuniary penalty that may be payable by Credit Suisse under an infringement notice given under subsection 798K(2) of the Act:

- by reason of contravening MIR 5.6.3, is \$600,000; and
- by reason of contravening MIR 5.9.1, is \$600,000.

Penalty under the Infringement Notice

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

- MIR 5.6.3 – \$65,000; and
- MIR 5.9.1 – \$30,000.

Therefore, the total penalty that Credit Suisse must pay to the Commonwealth is **\$95,000**.

Relevant factors

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance and noted in particular the following:

- MIR 5.6.3 is aimed at ensuring confidence in the integrity of the Market. Appropriate filters, filter parameters and processes, and controls around changes to filters, are critical elements in maintaining the integrity of the Market;
- A Trading Participant which uses AOP systems must ensure that it has in place adequate organisational and technical resources to account for corporate actions including share consolidations or reconstructions. Credit Suisse failed to ensure that its organisational and technical resources were such that its AOP system could account for the Reconstruction;
- 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;
- In this matter, the misconduct had the potential to damage the reputation and integrity of the market, particularly as the part entry of the Relevant Order into the ASX Trading Platform resulted in a price decrease from the expected Reconstruction adjusted last traded price of \$0.98 to \$0.51– being a 48% decrease. Moreover, the part execution of the Relevant Order set both the official open and low prices on 7 November 2011. The impact of the resulting trade had the potential to damage public confidence in the market;
- The breaches were negligent on the part of Credit Suisse. Whilst it is accepted that the Relevant Order was entered by the Client at an erroneous price, the Relevant Order was placed via Credit Suisse’s AOP system which failed to have appropriate filters and resources to prevent part of the Relevant Order being submitted to the ASX Trading Platform and subsequently trading;
- The serious nature of the breaches;

- Credit Suisse did not self-report the breaches to ASIC and failed to inform both ASIC and the ASX in a timely manner. The latter failure resulted in the part executed Relevant Order not being cancelled;
- Credit Suisse did not derive any actual or potential benefit from the breaches;
- One course of conduct resulted in the breaches;
- There were two breaches of the market integrity rules, being one breach of MIR 5.6.3 and one breach of MIR 5.9.1;
- Credit Suisse co-operated with ASIC throughout its investigation and did not dispute any material facts;
- Credit Suisse took action to prevent any recurrence of the breach, firstly on 7 November 2011, by initiating a temporary measure to alert Credit Suisse of Orders sent to Market in the instance when there is no reference price for limit checks. Further, on 15 June 2012, Credit Suisse implemented permanent measures by updating its technical resources to reject all Orders where there is no reference price;
- Credit Suisse has previously been sanctioned by the ASX Disciplinary Tribunal on six occasions since 2003. Two of these previous matters involved AOP contraventions. Credit Suisse has one prior contravention found against it by the MDP in Infringement Notice – MDP 31266/11 dated 29 August 2012, relating to Rule 5.6.1 of the ASIC Market Integrity Rules (ASX Market) 2010. The MDP notes that any future, repeat contraventions in similar or comparable matters will not be viewed favourably; and
- Credit Suisse 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 ("Regulations").

Additional regulatory information

Pursuant to sub-paragraph 7.2A.15(4)(b)(i) and (ii) of the Regulations, 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 Act.

Further information on market integrity infringement notices, the market integrity rules or the MDP is available in ASIC Regulatory Guide 216 – *Markets Disciplinary Panel* and ASIC 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".