Markets Disciplinary Panel

18 July 2013 **MDP CIRCULAR 2013–04**

DISCIPLINARY MATTER – UBS Securities Australia Ltd

UBS Securities Australia Ltd ("UBS") has paid a penalty of **$30,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for conduct which resulted in a market for a security not being both fair and orderly.

Background and circumstances

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

MIR 5.9.1 provides that:

> *"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) At 9:38:02 on 16 December 2011, UBS submitted into the ASX Trading Platform an Order for a client being an Ask (Offer) to sell 1,800 units in Betashares Gold Bullion ETF (A$ Hedged), having ASX code ("QAU"), at a price of $0.165 ("Relevant Order").

2) Immediately prior to entry of the Relevant Order:

   (a) the last traded price of QAU, was $15.75, being the last traded price on close of trading on the previous Trading Day; and

   (b) no other Orders for QAU were in the Trading Platform.

3) Between 7:00:00 and 10:00:00, the Trading Platform was in Pre–Open Session State whereby Bids and Offers may be entered, amended or cancelled in the Trading Platform and no Bids or Offers will be matched.

4) On commencement of trading at about 10:00:00, the Relevant Order transacted on the Trading Platform in its entirety between about 10:00:00 and 10:00:42 in two Market Transactions at a price of $0.165 with a total value of $297 and involved one Market Participant as counterparty.

5) The Relevant Order resulted in the price of QAU to decrease by $15.585 from the last traded price of $15.75 at close of trading on the previous Trading Day to a price of $0.165, being a 99% decrease in the price of QAU.

6) The Relevant Order was submitted into the Trading Platform by UBS' AOP system despite:

   (a) triggering a UBS AOP filter; and

   (b) being auto routed to a DTR for authorisation;

      (i) the DTR authorised the Relevant Order despite the receipt of two warning messages and despite the last traded price of QAU being $15.75 because the DTR misapplied a decimal point in the Relevant Order versus the last traded price, in the belief that it was at an appropriate price; and

      (ii) the Relevant Order was then submitted into the Trading Platform by UBS notwithstanding that the reference price for QAU was the previous Trading Day's closing price of $15.75.

7) UBS requested that ASX cancel the two Market Transactions and the ASX subsequently directed the cancellation of the two Market Transactions that impacted one counterparty Market Participant.

By reason of UBS' entry of the Relevant Order into the ASX Trading Platform on 16 December 2011, the MDP had reasonable grounds to believe that UBS contravened MIR 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 UBS to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 5.9.1, is $1,000,000. The maximum penalty that may be payable under an infringement notice for an alleged contravention of that rule is $600,000.

Penalty under the Infringement Notice

The penalty payable under the infringement notice for the alleged contravention of subsection 798H(1) of the Act and therefore the total penalty that UBS must pay to the Commonwealth is **$30,000.**

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 5.9.1 is aimed at ensuring a fair, open and transparent trading system, with a strict obligation imposed on Market Participants which requires that Participants do not do anything which results in a market for a product not being both fair and orderly;

- UBS had in place filter parameters that automatically routed the client Order for authorisation by a supervisor, a UBS DTR;

- The conduct appears to have been inadvertent on the part of the UBS DTR, rather than deliberate or reckless. Although the DTR involved in this matter was an experienced DTR with no history of previous errors, he failed in this case to perform this function to the requisite high standard;

- An important aspect of the role of the DTR is to review and prevent the entry of Orders into the Trading Platform that could result in a market that is not both fair and orderly, including having proper regard to any internal alerts generated. This is a critical measure in maintaining the integrity of a market;

- UBS undertook the following remedial measures to prevent recurrence:

    - conducted training of its DTRs;

    - updated its client Order configuration for client Orders into this particular AOP system to avoid human error in that it has implemented:

        - an Order system that has an auto deny or reject functionality if a particular client Order breaches a pre–defined price parameter in the first UBS system before the data connects to the AOP system; and

        - an auto deny functionality for Orders that breach pre–defined price parameters prior to entry into the ASX Warrants platform within the AOP system;

- UBS co–operated with ASIC throughout its investigation and did not dispute any material facts;

- UBS agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;

- This was an isolated incident;

- UBS has no recorded history of non–compliance with the market integrity rules and has had two recorded ASX Disciplinary Tribunal determinations of ASX Market Rules since 2004;

- UBS notified the Market Operator, ASX within the required time that facilitated cancellation of the trades;

- UBS did not self–report the contravention to ASIC;

- UBS formed a view that the breach was not significant for the purpose of paragraph 912D(1)(b) of the Act, and did not therefore self–report to ASIC; and

- UBS did not derive any actual or potential benefit from the contravention, nor did UBS cause any actual or potential damage to a third party.

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 subparagraph 7.2A.15(4)(b)(i) and (ii) of the Regulations, UBS has complied with the infringement notice, such compliance is not an admission of guilt or liability, and UBS 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".