Markets Disciplinary Panel

22 October 2013 **MDP CIRCULAR 2013–07**

DISCIPLINARY MATTER – UBS Securities Australia Ltd

UBS Securities Australia Ltd ("UBS") has paid a penalty of **$50,000** 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 put option 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) On 20 March 2012, at approximately 10:54am, a client of UBS ("Client") placed an Order to sell 193 Newcrest Mining Limited exchange traded June 2012 $28.34 put options, having at the time ASX code ("NCMNK8"), at market price over the course of the day ("Relevant Order"). The Relevant Order was worked by a UBS DTR ("Designated Trading Representative").

2) At approximately 10:55am, the UBS DTR entered the first part of the Relevant Order, being an Order to sell 18 NCMNK8 at $1.12, into the ASX Trading Platform. The UBS DTR then incrementally decreased the price of the first part of the Relevant Order until, at approximately 10:56am, it traded with another participant's Bid at $1.08, resulting in the first two Market Transactions for NCMNK8 that day.

3) The UBS DTR next intended to enter the second part of the Relevant Order, being an Order to sell 25 NCMNK8 at $1.115 into the ASX Trading Platform. At approximately 11:21am, the UBS DTR entered the second part of the Relevant Order into the ASX Trading Platform. However, the UBS DTR incorrectly keyed in the price as $0.115 instead of $1.115. Immediately prior to the entry of the second part of the Relevant Order, the last traded price for NCMNK8 was $1.055.

4) At approximately 11:21am, the second part of the Relevant Order traded in two Market Transactions, being for one NCMNK8 at $0.115 and 24 NCMNK8 at $0.115 ("Relevant Transactions").

5) The entry into the ASX Trading Platform of the second part of the Relevant Order, resulting in the Relevant Transactions, caused the price of NCMNK8 to fall from $1.055 to $0.115, being a $0.94 or 89% decrease in the price of NCMNK8.

6) The Relevant Transactions transacted in the Extreme Cancellation Range, as set out in procedure 3200 of the ASX Operating Rules Procedures, and were subsequently cancelled by ASX.

By reason of UBS' entry of the second part of the Relevant Order into the ASX Trading Platform on 20 March 2012, 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 pecuniary 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 **$50,000.**

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 not to do anything which results in a market for a Product not being both fair and orderly;

- The breach had the potential to damage the reputation and integrity of the Market, as the second part of the Relevant Order caused the price in NCMNK8 to fall from $1.055 to $0.115, being an 89% decrease in the price of NCMNK8;

- The breach was inadvertent on the part of UBS as the UBS DTR failed to properly exercise his functions to the requisite high standard when he incorrectly keyed the price as $0.115 instead of $1.115 and entered the second part of the Relevant Order into the ASX Trading Platform;

- The MDP noted that in this matter the UBS DTR did not receive any price variation warning messages or alerts. Notwithstanding this, an important aspect of the role of the DTR is to pay proper attention and diligence to prevent the entry of Orders into the

Trading Platform that could result in a market that is not both fair and orderly. This is a critical measure in maintaining the integrity of a market;

- UBS did not derive any actual or potential benefit from the breach;

- The UBS DTR became aware of the breach after the second part of the Relevant Order entered into the ASX Trading Platform had resulted in the Relevant Transactions. In accordance with rule [3200] of the ASX Operating Rules, UBS requested cancellation of the Relevant Transactions and subsequently contacted the relevant counterparties to confirm the agreement for cancellation;

- UBS took the following remedial measures to prevent recurrence of the breach:

    - conducted a review of all filter limits applicable to its exchange traded options trading desk;

    - implemented a number of new filters applicable to the exchange traded options desk; and

    - implemented a quarterly review process whereby the filter reject levels and the application of the filters to clients and internal users in relation to trading exchange traded options are affirmed or amended;

- UBS has previously been sanctioned by the ASX Disciplinary Tribunal regarding the predecessor rule to MIR 5.9.1 and involving a DTR (ASX Circular 431/09 dated 3 December 2009). UBS has also recently been sanctioned by the MDP regarding a DTR in breach of MIR 5.9.1, (MDP Circular 2013–4 dated 18 July 2013). The MDP confirms its position that, repeat contraventions in similar or comparable matters will not be viewed favourably;

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

- UBS 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 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".