

DISCIPLINARY MATTER – Macquarie Bank Limited

Macquarie Bank Limited (“Macquarie”) has paid a penalty of **\$175,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel (“MDP”). The penalty was for failing on two separate occasions, to deposit a total of \$23 million (being \$14 million and \$9 million respectively), received from a Client into Client Accounts maintained by Macquarie and designated as Clients’ segregated accounts.

Background and circumstances

Macquarie is alleged to have contravened subsection 798H(1) of the Act by reason of twice contravening Rule 2.2.6(a) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 (“MIR 2.2.6(a)”), which relevantly provides:

“A Market Participant, who holds Client monies, must comply with the following:

(a) Client money

*(i) All money received by the Market Participant from its Clients or by a person acting on behalf of the Client under these Rules or the Market Operating Rules must be deposited in an account maintained by the Market Participant and designated as a Clients’ segregated account.
....”*

On the evidence before it, the MDP was satisfied that:

- 1) On 3 October 2012, Macquarie re-opened a Client Account (“Account B”) for a Client (“Macquarie Client”). Macquarie failed to designate Account B as a segregated Client Account.
- 2) On 8 October 2012, Macquarie set up further Client Accounts for the Macquarie Client by cloning Account B. The cloning of Account B resulted in the establishment of another Client Account (“Account A”) for the Macquarie Client. Macquarie failed to designate Account A as a segregated Client Account.
- 3) On 10 October 2012, Macquarie received \$14 million from the Macquarie Client intended for Account A, but which was deposited by Macquarie into the Macquarie non-segregated House Account (“Contravention 1”).
- 4) On 11 October 2012, Macquarie received \$9 million from the Macquarie Client intended for Account B, but which was deposited by Macquarie into the Macquarie non-segregated House Account (“Contravention 2”).

- 5) On 12 October 2012, Macquarie's failure to designate Account A as a segregated Client Account was identified and corrected. Notwithstanding this, Macquarie made no enquires to establish whether the Macquarie Client's money had been affected by the failure to designate Account A as a segregated Client Account on 8 October 2012.
- 6) On 15 October 2012, Macquarie's failure to designate Account B as a segregated Client Account was identified and corrected. Notwithstanding this, Macquarie made no enquires to establish whether the Macquarie Client's money had been affected by the failure to designate Account B as a segregated Client Account on 3 October 2012.
- 7) On 17 October 2012, Macquarie's futures division enquired with Macquarie's finance division about a \$23 million movement from non-segregated House Accounts to segregated Client Accounts in the futures balance sheet. The explanation provided was that the error resulted from the redesignation of Account A and Account B to segregated Client Accounts on 12 and 15 October 2012 respectively. Notwithstanding this, Macquarie made no enquiries to establish whether the Macquarie Client's money had been affected by the failure to designate Account B and Account A as segregated Client Accounts on 3 and 8 October 2012 respectively.
- 8) On 25 October 2012, \$23 million (comprising the \$14 million and \$9 million received by Macquarie from the Macquarie Client on 10 and 11 October 2012 respectively) was moved from Macquarie's House Account into the Macquarie Client's segregated Client Account after a discrepancy was noted by a Macquarie delegate and escalated to senior management.

By reason of Macquarie's failure to deposit monies received from the Macquarie Client into Client Accounts maintained by Macquarie and designated as a Clients' segregated account on 10 and 11 October 2012 respectively, the MDP had reasonable grounds to believe that Macquarie had twice contravened MIR 2.2.6(a) and thereby twice 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 Macquarie to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 2.2.6(a), is \$1,000,000.

The maximum pecuniary penalty that may be payable by Macquarie under an infringement notice given pursuant to subsection 798K(2) of the Act, is \$600,000.

Penalty under the Infringement Notice

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

- MIR 2.2.6(a) – \$87,500 (Contravention 1);
- MIR 2.2.6(a) – \$87,500 (Contravention 2).

Therefore, the total penalty that Macquarie must pay to the Commonwealth is **\$175,000**.

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 2.2.6(a) is aimed at ensuring the segregation of Client monies from that of the Market Participant, with a strict, mandatory obligation on Market Participants to deposit and maintain Client monies in Client Accounts designated as segregated Client Accounts;
- Macquarie's failure to deposit monies received from the Macquarie Client into Client Accounts maintained by Macquarie and designated as segregated Client Accounts, on two separate occasions, was negligent on the part of Macquarie;
- The misconduct transpired over an unacceptable length of time. Macquarie rectified the breaches around 10 Business Days after they were first identified;
- From at least 12 and 15 October 2012 respectively, Macquarie was aware of its failure to designate Account A and Account B as segregated Client Accounts. Despite this, it was not until 25 October 2012 after a discrepancy was noted by a Macquarie delegate and escalated to senior management, that Macquarie moved the Macquarie Client's \$23 million from Macquarie's House Account into the Macquarie Client's segregated Client Account. As a result, the breaches were indicative of a systemic compliance failure in this instance, regarding the systems and controls Macquarie had in place to identify, escalate and rectify the error in relation to the Macquarie Client's money, and not as a whole in relation to its handling of Client funds;
- The potential loss to the Macquarie Client, in the event of Macquarie's insolvency, was real and significant for a period of around 10 Business Days;
- The MDP reiterated that it considers any breaches of the Rules relating to Client money segregation to be particularly serious in nature;
- The MDP emphasised the importance of all relevant Market Participant Employees appreciating the Rules relating to the handling of Client monies;
- One course of conduct resulted in the two breaches of MIR 2.2.6(a);
- Macquarie notified the breaches to ASIC;
- Macquarie took remedial steps in response to the breaches including implementing a range of enhanced detective and preventative compliance initiatives to eliminate future occurrences of a similar breach. Macquarie engaged external parties to assist in developing a more robust framework for its handling of Client monies, and liaised with ASIC to ensure its Client money processes and procedures were in accordance with its regulatory obligations;
- Macquarie had a minimal history of non-compliance including no previous contraventions found against it by the MDP;
- Macquarie co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Macquarie 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, Macquarie has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Macquarie 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".