

### DISCIPLINARY MATTER – Instinet Australia Pty Limited

Instinet Australia Pty Limited ("Instinet") 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 security not being both fair and orderly.

#### Background and circumstances

Instinet 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"), which 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 23 March 2012 at 10:26:28, on behalf of a client of Instinet ("Client"), an Instinet DTR ("Instinet DTR") entered an Order into the ASX Trading Platform to sell 250,000 Renison Consolidated Mines NL March 2012 convertible notes, having ASX code ("RSNG"), at a limit price of \$0.10 ("Initial Order").
- 2) The Initial Order immediately traded in part, resulting in a Market Transaction for 50,000 RSNG at \$0.10.
- 3) The Client then requested that the Instinet DTR move the residual part of the Initial Order, being an Order to sell 200,000 RSNG at \$0.10 ("Relevant Order"), to the Client for the purposes of Direct Market Access ("DMA"). To this end, at 10:27:42, the Instinet DTR deleted the Relevant Order.
- 4) The Instinet DTR next intended to move the Relevant Order to the Client, however at 10:27:50, the Instinet DTR instead entered the Relevant Order back into the ASX Trading Platform – incorrectly keying in the price as 'at-market' instead of at \$0.10. Immediately prior to the entry of the Relevant Order, the last traded price for RSNG was \$0.10.
- 5) The Relevant Order immediately traded in part resulting in a Market Transaction for 20,000 RSNG at \$0.02 ("Relevant Transaction"). At 10:27:53, on realising his error, the Instinet DTR deleted the residual part of the Relevant Order.
- 6) The entry into the ASX Trading Platform of the Relevant Order, resulting in the Relevant Transaction, caused the price of RSNG to fall from \$0.10 to \$0.02, being an \$0.08 or 80% decrease in the price of RSNG.
- 7) At 11:35:00, Instinet informed ASIC of the Relevant Transaction, and then at 12:10:00, contacted the ASX to request its cancellation. The ASX advised Instinet that it would not cancel the Relevant Transaction as it was outside the 10 minute cancellation

window, for cancellations that fell within the Qualifying Cancellation Range, as set out in procedure 3200 of the ASX Operating Rules Procedures.

By reason of Instinet's entry of the Relevant Order 'at-market' into the ASX Trading Platform on 23 March 2012, the MDP had reasonable grounds to believe that Instinet had 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 Instinet to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 5.9.1, is \$1,000,000.

In accordance with subsection 798K(2) of the Act, the maximum pecuniary penalty that may be payable by Instinet under an infringement notice given for an alleged contravention of MIR 5.9.1, 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 Instinet 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 promoting confidence in the integrity of the market. Imposing a strict obligation on Market Participants not to do anything which results in a market for a Product not being both fair and orderly, is critical in maintaining the integrity of the market;
- The misconduct had the potential to damage the reputation and integrity of the market, as the entry of the Relevant Order into the ASX Trading Platform at an 'at-market' price, caused the price of RSNG to decrease from the last traded price of \$0.10 to \$0.02, being an 80% decrease;
- The misconduct was inadvertent on the part of Instinet as the Instinet DTR failed to properly exercise his functions to the requisite high standard when he entered the Relevant Order back into the ASX Trading Platform (incorrectly keying in the price as 'at-market' instead of at \$0.10), instead of moving the Relevant Order to the Client as intended;
- The MDP noted in this matter that the Instinet DTR after keying in the Relevant Order 'at-market', did not receive any internal price variation warning messages or alerts prior to the Relevant Order entering into the ASX Trading Platform. Notwithstanding this, the MDP reiterated that 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;
- Instinet did not derive any actual or potential benefit from the breach;
- Instinet's DTR immediately became aware of the breach after the 'at-market' Relevant Order had entered into the ASX Trading Platform and resulted in the Relevant Transaction. Approximately 100 minutes later, Instinet requested the ASX cancel the

Relevant Transaction. The ASX advised that it would not cancel the Relevant Transaction as it was outside the 10 minute cancellation window, as set out in procedure 3200 of the ASX Operating Rules Procedures;

- Instinet took the following remedial measures to prevent recurrence of the breach:
  - Immediately instructed DTRs not to use the 'at market' functionality; and
  - From 29 March 2012, removed DTRs' ability to place orders 'at market' from Instinet's Automated Order Processing system.
- Instinet had recently been sanctioned by the MDP regarding a contravention of Rule 5.6.1(a) of the ASIC Market Integrity Rules (ASX Market) 2010 (MDP Infringement Notice No. MDP06/13, dated 8 August 2013). The MDP confirmed its position that repeat contraventions in similar or comparable matters would not be viewed favourably;
- Instinet co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Instinet 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, Instinet has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Instinet 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".