Markets Disciplinary Panel

19 March 2014 **MDP CIRCULAR 2014–05**

DISCIPLINARY MATTER – Hartleys Limited

Hartleys Limited ("Hartleys") has paid a penalty of **$35,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for the entry of an erroneous Order which resulted in a market for Tanami Gold NL fully paid ordinary shares not being both fair and orderly.

Background and circumstances

Hartleys 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 25 October 2012, on behalf of a client of Hartleys ("Client"), a Hartleys Designated Trading Representative ("Hartleys DTR") was working an Order to sell 35 million ABM Resources NL fully paid ordinary shares having ASX code ("ABU"), for the day ("Initial Order"). By approximately 15:59:00, the Hartleys DTR had sold 34.5 million ABU of the Initial Order.

2) As the market was nearing the close for the day, the Hartleys DTR next intended to sell the residual of the Initial Order being an Order to sell 500,000 ABU at a limit price of $0.053. However, at 15:59:54, the Hartleys DTR instead entered an Order to sell 500,000 Tanami Gold NL fully paid ordinary shares having ASX code ("TAM"), at a limit price of $0.053 ("Relevant Order") – by incorrectly keying in the ASX code as TAM instead of the intended ABU. Immediately prior to the entry of the Relevant Order into the ASX Trading Platform, the last traded price for TAM was $0.795.

3) Upon entering into the ASX Trading Platform, the Relevant Order immediately traded in part resulting in multiple Market Transactions for a total of 316,183 TAM down to a price of $0.50 ("Relevant Transactions"). At 16:01:08, on realising his error, the Hartleys DTR deleted the residual part of the Relevant Order.

4) The entry into the ASX Trading Platform of the Relevant Order, resulting in the Relevant Transactions, caused the price of TAM to fall from $0.795 to $0.50, representing a 37% decrease in the price of TAM.

5) Following the execution of the Relevant Transactions, Hartleys contacted the ASX requesting cancellation of the Relevant Transactions, as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time. The ASX advised Hartleys that it made cancellation requests to the counterparties of the Relevant Transactions which did not fall within the No Cancellation Range (i.e. the Relevant Transactions executed below $0.68). However, given that the Relevant Transactions executed below $0.68 did

not fall within the Extreme Cancellation Range, the counterparties had decided not to cancel.

By reason of Hartleys' entry of the Relevant Order into the ASX Trading Platform on 25 October 2012, the MDP had reasonable grounds to believe that Hartleys 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 Hartleys 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 Hartleys 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 Hartleys must pay to the Commonwealth, is **$35,000**.

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 caused the price of TAM to fall from the last traded price of $0.795 to $0.50, being a 37% decrease;
- The misconduct was inadvertent on the part of Hartleys as the Hartleys DTR failed to properly exercise his functions to the requisite high standard when he did not pay attention and incorrectly keyed in the ASX code as TAM instead of the intended ABU, before submitting the Relevant Order into the ASX Trading Platform;
- The MDP noted in this matter that the Hartleys DTR did not receive any price variation warning messages or alerts prior to the Relevant Order entering into the ASX Trading Platform because his trading workstation's parameters had not been configured correctly. 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;
- Hartleys did not derive any actual or potential benefit from the breach;
- Upon becoming aware of the breach following the execution of the Relevant Transactions, Hartleys immediately requested the ASX cancel the Relevant Transactions, however the ASX advised that it would not cancel the Relevant Transactions because they either fell within the No Cancellation Range or did not fall

within the Extreme Cancellation Range, as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time;

- The misconduct was an isolated incident;
- Hartleys had no contraventions found against it by the MDP regarding non-compliance with the market integrity rules and only two previous contraventions found against it by the ASX Disciplinary Tribunal since 2010 regarding non-compliance with the ASX Market Rules;
- Hartleys fully co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Hartleys 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, Hartleys has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Hartleys 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".