6 May 2014   **MDP CIRCULAR 2014–06**

DISCIPLINARY MATTER – D2MX Pty Ltd

D2MX Pty Ltd ("D2MX") has paid a total penalty of **$110,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for:

- Failing to ensure that its Automated Order Processing ("AOP") system had in place organisational and technical resources, including having a 'price movement from last' automated filter and processes to record any changes to the automated filters, which interfered with the efficiency and integrity of the ASX market and the proper functioning of the Trading Platform; and

- Failing to prevent the entry into the Trading Platform of an erroneous Order which resulted in a market for BHP Billiton Limited exchange traded March 2012 $43.51 put options not being both fair and orderly.

Background and circumstances

D2MX is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Act") by reason of contravening Rules 5.6.3(a) and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.3(a)" and "MIR 5.9.1").

MIR 5.6.3(a) provides:

> "*A Trading Participant which uses its system for Automated Order Processing must ensure that the system has in place:*
>
> *(a) organisational and technical resources, including having appropriate automated filters, filter parameters and processes to record any changes to the filters or filter parameters, to enable Trading Messages to be submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform;*"

MIR 5.9.1 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 21 September 2011, a client of D2MX ("Client") was granted Direct Market Access ("DMA") through D2MX's AOP system.

2) Between 21 September 2011 and 29 March 2012 ("Relevant Period"), D2MX deliberately deactivated the 'price movement from last' AOP filter with respect to Derivative Market Contract Orders received from the Client. D2MX made the deliberate decision to deactivate because the Client was known to D2MX and, in D2MX's opinion, appropriately experienced.

3) On 29 March 2012, at 1:55pm, the Client by DMA entered an Order to sell 940 BHP Billiton Limited exchange traded March 2012 $43.51 put options, having at the time ASX code ("BHPUL9"), at a price of $0.06 via D2MX's AOP system ("Relevant Order").

4) The last traded price of BHPUL9 immediately prior to the entry of the Relevant Order, was $9.23. The Relevant Order was erroneous as the Client had intended to enter an Order to sell six BHPUL9 at $9.40.

5) As a result of the 'price movement from last' AOP filter being deactivated on the Client's account, the Relevant Order was able to be submitted via D2MX's AOP system into the Trading Platform and trade immediately in full resulting in the following 13 Market Transactions ("Relevant Transactions"):

- one Market Transaction for 30 BHPUL9 at $8.83;

- one Market Transaction for 140 BHPUL9 at $8.80; and

- eleven Market Transactions for 770 BHPUL9 at $0.06.

6) The Relevant Order caused the price of BHPUL9 to decrease from the last traded price of $9.23 to $0.06, representing a decrease of 99.3%.

7) On becoming aware of the Relevant Order, D2MX contacted the ASX and requested cancellation of the Relevant Transactions. The ASX directed that 11 of the Relevant Transactions, being the 11 Market Transactions for 770 BHPUL9 at $0.06, be cancelled as they transacted in the Extreme Cancellation Range as set out in procedure 3200 of the ASX Operating Rules Procedures.

8) D2MX were unable to provide records detailing the reason(s) for, and/or the time(s) that the 'price movement from last' AOP filter was activated/deactivated during the Relevant Period.

By reason of D2MX's entry of the Relevant Order into the ASX Trading Platform on 29 March 2012, the MDP had reasonable grounds to believe that D2MX contravened MIR 5.6.3(a) and 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 D2MX to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 5.6.3(a), is $1,000,000;

- 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 D2MX under an infringement notice given:

- for an alleged contravention of MIR 5.6.3(a), is $600,000;

- for an alleged contravention of MIR 5.9.1, is $600,000.

Penalty under the Infringement Notice

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

- MIR 5.6.3(a) – $80,000;
- MIR 5.9.1 – $30,000.

Therefore the total penalty payable under the infringement notice for the alleged contraventions of subsection 798H(1) of the Act that D2MX must pay to the Commonwealth, is **$110,000**.

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 5.6.3(a) is aimed at promoting confidence in the integrity of the market. Ensuring that Trading Participants with AOP systems have in place adequate organisational and technical resources to operate without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform, is critical in maintaining the integrity of the market. This includes having appropriate filters, filter parameters and processes to record any changes to filters or filter parameters;

- Appropriate automated filters are essential components of DMA AOP systems used by clients of Trading Participants. Appropriate automated filters are in place to ensure Orders are submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform. Processes to record any changes made to automated filters serve an important AOP system risk mitigation function;

- D2MX failed to ensure that at all times its AOP system had in place or had activated appropriate automated filters, and failed to ensure that it had in place processes to record any changes to the automated filters. The failure of D2MX to ensure that its AOP system had these safeguards in place risked undermining public confidence in the integrity of the market;

- If, for whatever reason appropriate automated filters are deactivated or otherwise unavailable, then a Trading Participant's system must not be used for AOP, instead Orders should be submitted for entry into the Trading Platform through a DTR or not be submitted at all. Notwithstanding this, the MDP noted the difficulty in setting appropriate automated filters for Options Orders;

- Additionally, it is unacceptable for Trading Participants to deactivate or otherwise make changes to their automated filters without being in a position to record any changes made including the reasons underlying any changes made;

- 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 BHPUL9 to decrease from the last traded price of $9.23 to $0.06, being a 99.3% decrease;

- D2MX's conduct of deactivating the 'price movement from last' AOP filter on the Client's account was deliberate, and thereby conduct of an intentional type;

- The breaches were of a serious nature;

- One course of conduct resulted in two breaches of the market integrity rules, being one breach of MIR 5.6.3(a) and one breach of MIR 5.9.1;

- D2MX did not derive any actual or potential benefit from the breaches;

- D2MX took action to prevent recurrence of the breaches on 29 March 2012 at a time after the Relevant Transactions, by reactivating the 'price movement from last' AOP filter on the Client's account;

- D2MX had no history of non-compliance with the market integrity rules or ASX Market Rules, including no previous contraventions found against it by the MDP;

- D2MX co-operated with ASIC throughout its investigation and did not dispute any material facts; and

- D2MX 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 subparagraphs 7.2A.15(4)(b)(i) and (ii) of the Regulations, D2MX has complied with the infringement notice, such compliance is not an admission of guilt or liability, and D2MX 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".