



**ASIC**

Australian Securities &  
Investments Commission

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## Contents

### Markets Disciplinary Panel Infringement Notice

**Recipient:** Taylor Collison Limited

The recipient has complied with the infringement notice. Compliance is not an admission of guilt or liability; and the recipient is not taken to have contravened subsection 798H (1) of the Corporations Act 2001.

#### RIGHTS OF REVIEW

Recipients affected by the decision of the Markets Disciplinary Panel to give them an infringement notice under subsection 798H(1) of the *Corporations Act 2001* and Part 7.2A of the *Corporations Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn. ASIC has published RG 216 to assist recipients to determine whether they have such rights – see RG 216.71 and RG 216.77 to 216.79. Copies of this document can be obtained from the ASIC website at [www.asic.gov.au](http://www.asic.gov.au)

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## PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

**To:** Taylor Collison Limited  
Level 16, 211 Victoria Square  
ADELAIDE SA 5000

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Taylor Collison Limited ACN 008 172 450 ("Taylor Collison") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Taylor Collison must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$30,000.**

This infringement notice is given on 22 July 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP26585/13.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 1.4.3") have the same meaning when used in this notice, including those set out in the Appendix to this notice. Certain additional defined terms used in this notice are also set out in the Appendix to this notice.

### **Alleged contravention and penalty**

Taylor Collison was a Trading Participant in the Market operated by the ASX at the relevant time and was therefore an entity required by subsection 798H(1) of the *Corporations Act 2001* ("Act") to comply with the market integrity rules at that time.

Taylor Collison is alleged to have contravened subsection 798H(1) of the 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 Markets Disciplinary Panel ("MDP") was satisfied that:

- 1) On 20 August 2012, Taylor Collison received from a client ("Client 1"), an Order to sell 100,000 BC Iron Limited fully paid ordinary shares having ASX code 'BCI' at \$2.64 ("Order 1"); and separately received from another client ("Client 2"), an Order to buy 100,000 BCI at \$2.64 ("Order 2").
- 2) To facilitate the instructions of both Client 1 and Client 2, Taylor Collison treated Order 1 and Order 2 as a priority Crossing ("Priority Crossing"). The Priority Crossing was to be executed by a Taylor Collison Designated Trading Representative or DTR ("Taylor Collison DTR").
- 3) Between 11:16:00 and 11:18:33, to execute the Priority Crossing, the Taylor Collison DTR on six separate occasions attempted to establish a Crossing market by entering into the ASX Trading Platform a sell Order for a small volume of BCI at \$2.65. However on each occasion, the attempt to establish a Crossing market failed because the sell Order for BCI at \$2.65 was being bought before the Taylor Collison DTR could execute the Priority Crossing. This resulted in six Market Transactions at \$2.65 for 15 BCI in total.
- 4) The Taylor Collison DTR next sought to establish a Crossing market by entering into the ASX Trading Platform a sell Order for a larger volume (4,985) of BCI at \$2.65. The Taylor Collison DTR then intended to Cross 95,000 BCI at \$2.64 followed by the residual 4,985 BCI also at \$2.64. However, at 11:20:39, the Taylor Collison DTR erroneously keyed the price as \$4.64 into the Trader Workstation he was logged into, instead of the intended \$2.64, and submitted into the ASX Trading Platform a Priority Crossing for 95,000 BCI at \$4.64 ("Relevant Order").
- 5) No internal 'price variation' warning messages or alerts were generated after the keying of the Relevant Order into the Trader Workstation and before its submission into the ASX Trading Platform. This was because the ASX Trader Workstation the Taylor Collison DTR was logged into had had its user set soft filters disabled by the Taylor Collison DTR.
- 6) The market in BCI immediately prior to the entry of the Relevant Order was \$2.64/ \$2.65/ \$2.65 (Bid/ask/last traded price).
- 7) The Relevant Order immediately traded resulting in 19 Market Transactions for a total of 79,164 BCI at prices between \$2.65 and \$3.50, with the residual of 15,836 BCI being Crossed at \$4.64 ("Relevant Transactions"). As a result, the Relevant Order caused the price of BCI to increase from \$2.65 to \$4.64, being an increase of \$1.99 or 75%.
- 8) On identifying the Relevant Transactions, another DTR from Taylor Collison at approximately 11:24:00, initially notified the ASX of the Relevant Order and requested cancellation of the Relevant Transactions as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time. The ASX advised Taylor Collison that it would not cancel the Relevant Transactions as they were not in the Extreme Cancellation Range, in accordance with Rule 2.2.1 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 ("MIR CEM 2.2.1"), and also because the counterparties to the Relevant Transactions would not agree to cancellation. Notwithstanding this, Taylor

Collison self-cancelled the 15,836 BCI at \$4.64 at 11:21:07 and also the 4,985 BCI at \$2.65 at 11:40:03.

By reason of Taylor Collison's entry of the Relevant Order into the ASX Trading Platform on 20 August 2012, the MDP has reasonable grounds to believe that Taylor Collison has contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the Act.

### Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Taylor Collison 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 by Taylor Collison under an infringement notice given pursuant to subsection 798K(2) of the Act by reason of allegedly contravening MIR 5.9.1, is \$600,000.

### Penalty under the Infringement Notice

The penalty payable under this infringement notice for the alleged contravention of subsection 798H(1) of the Act and therefore the total penalty that Taylor Collison must pay to the Commonwealth is **\$30,000**.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance, including ASIC Regulatory Guide 216—*Markets Disciplinary Panel*, 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 BCI to increase from the last traded price of \$2.65 to \$4.64, being a 75% increase;
- The misconduct was inadvertent on the part of Taylor Collison as the Taylor Collison DTR failed to properly exercise his functions to the requisite high standard when he erroneously keyed in the price as \$4.64 instead of the intended \$2.64, before submitting the Relevant Order into the ASX Trading Platform;
- The MDP noted in this matter that the Taylor Collison DTR, after keying the Relevant Order into the Trader Workstation he was logged into, did not receive any internal price variation warning messages or alerts prior to the Relevant Order being submitted into the ASX Trading Platform. Notwithstanding this, the MDP reiterated that an important aspect of the role of the DTR, as an internal control, 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 the market;

- Taylor Collison did not derive any actual or potential benefit from the breach and in fact incurred a significant loss;
- There was one breach of MIR 5.9.1;
- Upon becoming aware of the breach, Taylor Collison immediately requested the ASX cancel the Relevant Transactions. This request for cancellation was made approximately three minutes after the Relevant Transactions. Notwithstanding this, the ASX would not cancel the Relevant Transactions as they were not in the Extreme Cancellation Range, in accordance with MIR CEM 2.2.1, and also because the counterparties to the Relevant Transactions would not agree to cancellation;
- In the prevention of recurrence of the misconduct, Taylor Collison had undertaken:
  - formal disciplinary action against the Taylor Collison DTR involved in the misconduct, including a formal warning and pecuniary penalty;
  - retraining of the Taylor Collison DTR and re-education of all its DTRs;
  - a review of all soft filter preference settings for all DTRs;
  - an alteration of its procedures to ensure that the 'price deviation' soft filter is activated at all times and also including procedures for regular spot-checks to ensure activation; and
  - a migration to the Fidessa ASX Best trading application which does not require a Crossing market to first be created before a Crossing is executed.
- Taylor Collison had no prior contraventions found against it by the MDP for non-compliance with the market integrity rules;
- Taylor Collison co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Taylor Collison agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

### **Compliance with the Infringement Notice**

Taylor Collison may choose not to comply with this infringement notice, but if Taylor Collison does not comply, civil proceedings may be brought against Taylor Collison in relation to the alleged contravention.

To comply with this infringement notice, Taylor Collison must pay the penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to Taylor Collison; and
- (b) ends 27 days after the day on which the infringement notice is given to Taylor Collison;

unless an application is made for its extension.

Taylor Collison may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If Taylor Collison does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If Taylor Collison applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- (a) 28 days after the day on which the infringement notice was given to Taylor Collison; and
- (b) 7 days after the notice of refusal is given to Taylor Collison.

Taylor Collison may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If Taylor Collison does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to Taylor Collison.

### **Effect of issue and compliance with the Infringement Notice**

The effects of compliance with this infringement notice are:

- (a) any liability of Taylor Collison to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged;
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against Taylor Collison for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act;
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against Taylor Collison for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act;
- (d) Taylor Collison is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Taylor Collison is not taken to have contravened subsection 798H(1) of the Act.

### **Publication**

ASIC may publish details of this infringement notice under regulation 7.2A.15 of the Regulations.



### **Susan Humphreys**

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities & Investments Commission

Note: Members of ASIC's Markets Disciplinary Panel constitute a Division of ASIC as delegates of the members of the Division for the purposes of considering the allegations covered by this notice.

### Appendix – Defined Terms

The terms defined in MIR 1.4.3 have the same meaning when used in this notice, including:

"ASX" means ASX Limited (ACN 008 624 691).

"Cross" or "Crossing", means a transaction in respect of which a Trading Participant acts:

- (a) on behalf of both buying and selling clients to that transaction;

....

"DTR" means a Representative of the Trading Participant who has been authorised by the Trading Participant to submit Trading Messages to the Trading Platform on behalf of the Trading Participant.

"Market" means the market operated by the Market Operator under Australian Market Licence (Australian Stock Exchange Limited) 2002.

"Market Participant" means a Participant in the Market admitted under the Market Operating Rules.

"Market Transaction" means a transaction for one or more Products, entered into on a Trading Platform or reported to the Market Operator under the Market Operating Rules.

"Order" relevantly means:

- (a) In relation to Cash Market Products, an instruction to purchase or sell Cash Market Products, or an instruction to amend or cancel a prior instruction to purchase or sell Cash Market Products;

....

"Trader Workstation" means a personal computer with Trader Workstation Software installed.

"Trader Workstation Software" means the software product provided by the Market Operator or a subsidiary for use by Trading Participants which provides a Trader Workstation with the functionality necessary to use the Open Interface for trading on a Trading Platform.

"Trading Messages" means those messages submitted into a Trading Platform relating to trading functions, such as Orders, amendment or cancellation of Orders and the reporting or cancellation of Market Transactions on the Trading Platform.

"Trading Participant" means a Market Participant which has Trading Permission in respect of one or more Products.

"Trading Permission" means the right to submit Trading Messages in a Trading Platform.

"Trading Platform" means a facility made available by the Market Operator to Trading Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions.

This notice adopts the following additional definition of terms:

"Extreme Cancellation Range" means the range set out in procedure 3200 of the ASX Operating Rules Procedures as defined in rule [7100] of section 7 of the ASX Operating Rules as at 20 August 2012.