



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

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# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

**Recipient:** Goldman Sachs Australia Pty Ltd

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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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:** Goldman Sachs Australia Pty Ltd  
Governor Phillip Tower  
Level 42, 1 Farrer Place  
SYDNEY NSW 2000

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Goldman Sachs Australia Pty Ltd ACN 006 797 897 ("Goldman Sachs") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Goldman Sachs must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$35,000**.

This infringement notice is given on 25 July 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP2551613.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 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**

Goldman Sachs 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.

Goldman Sachs 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 17 May 2012, a client of Goldman Sachs ("Client"), instructed Goldman Sachs to buy 2,800 AP Eagers Limited fully paid ordinary shares having ASX code 'APE' at 'Best Carefully' ("Initial Order").
- 2) The Initial Order was to be manually worked by a Designated Trading Representative or DTR at Goldman Sachs ("Goldman Sachs DTR"). The Goldman Sachs DTR was to also work a number of other unrelated Orders including an 'at-market' Order to buy National Australia Bank Limited fully paid ordinary shares having ASX code 'NAB'.
- 3) As the market was nearing the open for the day, the Goldman Sachs DTR intended to key-in the Initial Order through Goldman Sachs' manual trading system ("Trading System") before its submission into the ASX Trading Platform. However, at 9:52:44 during the Pre\_Open Session State, the Goldman Sachs DTR instead keyed-in an Order to buy 2,800 APE at \$29.13 and submitted this into the ASX Trading Platform ("Relevant Order") – by mistakenly thinking the ASX code had been keyed-in as NAB when in fact it was APE.
- 4) The market in APE immediately prior to the entry of the Relevant Order into the ASX Trading Platform was \$14.85/\$15.00/\$14.85 (Bid/ask/last traded price).
- 5) After the Relevant Order was keyed-in through the Trading System and before its submission into the ASX Trading Platform, the Goldman Sachs DTR received and acknowledged Trading System soft filter alerts or warnings for 'price deviation'.
- 6) On market open, after commencement of the Open Session State and opening auction, at 9:59:59 the Relevant Order matched and executed in full resulting in four Market Transactions totalling 2,800 APE at \$29.00 ("Relevant Transactions").
- 7) The submission into the ASX Trading Platform of the Relevant Order, resulting in the Relevant Transactions, caused the price of APE to increase from \$14.85 to \$29.00, representing an increase of \$14.15 or 95%.
- 8) At 10:08:00, following an initial telephone call, the Goldman Sachs DTR contacted the ASX by email and requested cancellation of the Relevant Transactions. The Relevant Transactions were subsequently cancelled by ASX direction.

By reason of Goldman Sachs' entry of the Relevant Order into the ASX Trading Platform on 17 May 2012, the MDP has reasonable grounds to believe that Goldman Sachs 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 Goldman Sachs 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 Goldman Sachs 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 Goldman Sachs must pay to the Commonwealth is **\$35,000**.

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 submission of the Relevant Order into the ASX Trading Platform caused the price of APE to increase from the last traded price of \$14.85 to \$29.00, representing a \$14.15 or 95% increase;
- The misconduct was inadvertent on the part of Goldman Sachs as the functions of the Goldman Sachs DTR were not exercised to the requisite high standard when the Goldman Sachs DTR did not pay attention and mistakenly thought the ASX code had been keyed-in as NAB when in fact it was APE, before submitting the Relevant Order into the ASX Trading Platform;
- The MDP noted in this matter that the Goldman Sachs DTR received and acknowledged Trading System soft filter alerts or warnings for 'price deviation' prior to the Relevant Order being submitted into the ASX Trading Platform. An important aspect of the role of the DTR, as an internal control, is to pay proper attention and diligence (including proper attention and diligence in the review of alerts or warnings) to prevent the submission 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;
- Goldman Sachs had in place effective internal procedures to ensure compliance with the market integrity rules and to detect potential breaches of them including by way of soft filters on the instance of its Trading System used by its DTRs to manually work Orders. However, in this instance, these procedures failed to prevent the breach the subject of this matter as the Goldman Sachs DTR acknowledged the Trading System soft filter alerts or warnings for 'price deviation';
- Goldman Sachs did not derive any actual or potential benefit from the breach;

- Upon becoming aware of the breach following the execution of the Relevant Transactions, the Goldman Sachs DTR notified the ASX and requested cancellation within the required time that facilitated cancellation of the Relevant Transactions, as set out in procedure 3200 of the ASX Operating Rules Procedures at the relevant time;
- The misconduct was an isolated incident;
- Goldman Sachs had no contraventions found against it by the MDP regarding non-compliance with the market integrity rules and had three previous contraventions found against it by the ASX Disciplinary Tribunal since 2007 regarding non-compliance with the ASX Market Rules;
- Goldman Sachs took steps to prevent recurrence of the breach by escalating the breach to Compliance and senior equities management for review and consideration. As a result, Goldman Sachs:
  - Updated Open Session State and opening auction Trading System soft filter alerts or warnings, including cumulative or additional alerts or warnings which must be reviewed and acknowledged by a senior DTR before any respective Order can be submitted into the Trading Platform;
  - Retrained DTRs on relevant Trading System soft filter alerts or warnings; and
  - Counselling the Goldman Sachs DTR on the importance of ensuring that manual Orders are correctly keyed-in through the Trading System, including ensuring that any Trading System soft filter alerts or warnings are appropriately considered and understood, before the submission of any Order into the Trading Platform.
- Goldman Sachs fully co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Goldman Sachs agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

### Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

If Goldman Sachs 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 Goldman Sachs; and
- (b) 7 days after the notice of refusal is given to Goldman Sachs.

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

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

The effects of compliance with this infringement notice are:

- (a) any liability of Goldman Sachs 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 Goldman Sachs 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 Goldman Sachs 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) Goldman Sachs is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Goldman Sachs 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).

"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;

....

"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 definitions of terms:

"Pre\_Open Session State" means the Session State of that name described in Appendix [4013] Part 1 of the ASX Operating Rules Procedures as defined in rule [7100] of section 7 of the ASX Operating Rules as at 17 May 2012.

"Open Session State" means the Session State of that name described in Appendix [4013] Part 1 of the ASX Operating Rules Procedures as defined in rule [7100] of section 7 of the ASX Operating Rules as at 17 May 2012.