



ASIC

Australian Securities &
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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: BBY 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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

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Markets Disciplinary Panel Infringement Notice

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

To: BBY Limited
Level 13
8 Exhibition Street
MELBOURNE VIC 3000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to BBY Limited ACN 006 707 777 ("BBY") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice BBY must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
\$90,000.

This infringement notice is given on 14 August 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP23376/13.

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

BBY 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.

BBY is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 5.6.3(a) of the ASIC Market Integrity Rules (ASX Market) 2010, ("MIR 5.6.3(a)") which 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 filter 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;"*

On the evidence before it, the Markets Disciplinary Panel ("MDP") was satisfied that:

- 1) In October 2011, BBY upgraded its AOP system (supplied by a third party software vendor ("AOP System Vendor")) to accommodate the introduction of market competition. As part of the upgrade, a bridge ("Bridge") was used to transfer the Direct Market Access ("DMA") Order flow received for 30 client accounts ("Relevant Accounts") from BBY's previous AOP system to its upgraded AOP system. The first of the Relevant Accounts was bridged on 19 October 2011.
- 2) BBY applied a default user limit group to the Relevant Accounts, which did not contain any AOP filters.
- 3) BBY did not test the application of AOP filters on Order flow routed to the ASX Trading Platform via the Bridge.
- 4) While BBY advised ASIC that it undertook testing of the Bridge in respect of whether it enabled Orders to get to the Market, it was not able to provide formal records or documentation evidencing that testing.
- 5) BBY's internal email communications indicated that some testing was performed before 19 October 2011, but that testing was limited to router functionality. The testing did not include testing of the application of AOP filters on Order flow routed via the Bridge.
- 6) On 26 October 2011, BBY corresponded with the AOP System Vendor noting the differing limits applicable on client accounts between the previous AOP system and the upgraded AOP system and requested confirmation from the AOP System Vendor whether the default user limit group to the Relevant Accounts: had been signed off by BBY; and whether they overrode the limits of the previous AOP system.
- 7) In reply on the same day, the AOP System Vendor outlined that it was unable to confirm whether the limits had been signed off by BBY and suggested that BBY undertake its own checking of accounts between the previous AOP system and the upgraded AOP system to ensure that no accounts had been overlooked and that BBY was satisfied with the limits.
- 8) BBY did not provide evidence of any action it took as a result of the AOP System Vendor's reply.
- 9) BBY remained unaware that AOP filters did not apply to the Relevant Accounts until a query was raised by ASIC on 7 June 2012, as a result of enquiries it was undertaking in relation to an unrelated matter.
- 10) No AOP filters were applied to DMA Orders received from the Relevant Accounts for a period of approximately eight months from 19 October 2011 until 18 June 2012, which was the date when BBY ceased routing DMA Order flow from the Relevant Accounts via the Bridge ("Relevant Period").
- 11) In August 2012, BBY engaged a third party IT consultant to provide a program that would produce a report which reviewed the applicability of AOP filters to all DMA client accounts within its AOP system. This review process was repeated on a monthly basis by BBY compliance as part of its monitoring program.
- 12) In December 2013, BBY extended the third party IT consultant's engagement, to include the provision of real time live monitoring of AOP filters for the purposes of alerting BBY compliance of any changes to AOP filters or limits.

By reason of BBY's failure to ensure that AOP filters were applied to the Relevant Accounts during the Relevant Period, the MDP has reasonable grounds to believe that BBY has contravened MIR 5.6.3(a), 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 BBY to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 5.6.3(a), is \$1 million.

The maximum pecuniary penalty that may be payable by BBY under an infringement notice given pursuant to subsection 798K(2) of the Act by reason of allegedly contravening MIR 5.6.3(a), 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 BBY must pay to the Commonwealth is **\$90,000**.

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:

- That the remedies applied should promote market integrity and confident and informed participation of investors in financial markets;
- 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:
 - (i) filters;
 - (ii) filter parameters; and
 - (iii) processes to identify any changes made to filters or filter parameters, processes to record those changes and processes to test changes made;
- Appropriate AOP filters or 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 identify, record and test any changes made to automated filters serve an important AOP system risk mitigation function;
- BBY 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 identify, record and test any changes to the automated filters. The failure of BBY to ensure that its AOP system had these safeguards risked undermining public confidence in the integrity of the market;

- If, for whatever reason changes are made to automated filters, it is unacceptable for Trading Participants not to have processes to identify any changes made, processes to record any changes made, and processes to thoroughly test any changes made in a non-live environment, to ensure that systems used for AOP have appropriate automated filters in place and activated. This is a critical measure in maintaining the integrity of a market;
- The misconduct was careless on the part of BBY as it neglected to ensure that its AOP system had in place adequate organisational and technical resources;
- The misconduct transpired over an unacceptable length of time being a period of approximately eight months;
- Although BBY did not derive any actual or potential benefit from the misconduct, the misconduct had the potential to cause detriment to third parties;
- There was only one breach of MIR 5.6.3(a);
- BBY took remedial steps to prevent recurrence of a similar breach by implementing detective and preventative compliance initiatives. This included BBY engaging a third party IT consultant to establish processes in the identification of changes made to automated filters;
- BBY had a minimal history of non-compliance with no previous contraventions found against it by the MDP and four previous determinations made against it since 2001 by the ASX Disciplinary Tribunal regarding breaches of the ASX Market Rules or ASX Business Rules. This included non-compliance with ASX Market Rules 13.1.4(a) and 13.1.5(a)(i) (the similar predecessor rules to MIR 5.6.3(a)) (ASX Circular 452/11 – dated 28 September 2011). The MDP noted its previous comments in MDP Infringement Notice No. MDP07/13 – dated 22 October 2013, "...that, repeat contraventions in similar or comparable matters will not be viewed favourably";
- BBY co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- BBY agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

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

"Automated Order Processing" means the process by which orders are registered in a Trading Participant's system and, if accepted for submission into a Trading Platform by the Trading Participant, submitted as corresponding Trading Messages without being keyed or rekeyed by a DTR.

"DTR" means a Representative of the Trading Participant who has been authorised 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" 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:

"Direct Market Access" means an Order submitted by a client of a Trading Participant into the Trading Participant's system and subject to Automated Order Processing.