1 September 2014 **MDP CIRCULAR 2014–10**

DISCIPLINARY MATTER – Goldman Sachs Australia Pty Ltd

Goldman Sachs Australia Pty Ltd ("Goldman Sachs") 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 failing to prevent the entry into the ASX Trading Platform of an erroneous Order which resulted in a market for AP Eagers Limited ordinary shares not being both fair and orderly.

Background and circumstances

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

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 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 had reasonable grounds to believe that Goldman Sachs contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the Corporations 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 Goldman Sachs to pay for contravening subsection 798H(1) of the Corporations Act by reason of contravening MIR 5.9.1, is $1,000,000.

Pursuant to subsection 798K(2) of the Act, the maximum pecuniary penalty that may be imposed by the MDP and payable by Goldman Sachs under an infringement notice given for contravening subsection 798H(1) of the Corporations Act by reason of allegedly contravening 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 Corporations Act and therefore the penalty that Goldman Sachs must pay to the Commonwealth, is **<u>$35,000.</u>**

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 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
    - Counselled 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 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.

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, Goldman Sachs has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Goldman Sachs is not taken to have contravened subsection 798H(1) of the Corporations 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".