

**DISCIPLINARY MATTER – BBY Limited**

BBY Limited ("BBY") has paid a penalty of **\$90,000** 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 appropriate automated filters for 30 client accounts and processes to record any changes to the automated filters, without interfering with the efficiency and integrity of the ASX market or the proper functioning of its trading platform.

**Background and circumstances**

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

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 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 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 the 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 ASX 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 had reasonable grounds to believe that BBY contravened MIR 5.6.3(a), 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 BBY to pay for contravening subsection 798H(1) of the Corporations Act, by reason of contravening MIR 5.6.3(a), is \$1,000,000;

Pursuant to subsection 798K(2) of the Corporations Act, the maximum pecuniary penalty that may be imposed by the MDP and payable by BBY under an infringement notice given for contravening subsection 798H(1) of the Corporations Act, by reason of allegedly contravening MIR 5.6.3(a), 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 BBY must pay to the Commonwealth, is **\$90,000**.

## **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:

- 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:
  - filters;
  - filter parameters; and
  - 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.

### **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, BBY has complied with the infringement notice, such compliance is not an admission of guilt or liability, and BBY 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".