



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

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# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

**Recipient:** ABN AMRO Clearing Sydney 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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:** ABN AMRO Clearing Sydney Pty Ltd  
Level 8  
50 Bridge Street  
SYDNEY NSW 2000

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to ABN AMRO Clearing Sydney Pty Ltd ACN 081 279 889 ("ABN AMRO") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice ABN AMRO must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$40,000.**

This infringement notice is given on 16 September 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP2808/14.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX 24 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**

ABN AMRO was a Market Participant in the Market operated by the Australian Securities Exchange Limited ("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.

ABN AMRO is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 2.2.1(1)(b) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 2.2.1(1)(b)"), which provides:

*"(1) Limits:*

*A Market Participant must demonstrate prudent risk management procedures, including, but not limited to:*

*(b) set and document maximum price change limits;"*

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

- 1) On 23 November 2011, the maximum price change ("MPC") limit for one Direct Market Access or DMA Client of ABN AMRO ("ABN AMRO Client") on its Client Account

was set by ABN AMRO at 999.9 basis points from the last Traded price, or in its absence the Daily Settlement Price ("DSP"), for ASX 30 Day Interbank Cash Rate Futures Contracts.

- 2) On 23 November 2011 at approximately 16:40:00, the ASX published the DSP for the January 2013 ASX 30 Day Interbank Cash Rate Futures Contract ("IBF3"), being 97.070.
- 3) Between approximately 16:40:00 and 17:31:43, IBF3 did not Trade.
- 4) At 17:26:57, another Market Participant entered into the Trading Platform an implied Order to sell 200 IBF3 at 95.900 ("Counterpart Order"), being at a price 117 basis points lower than the prior IBF3 DSP of 97.070.
- 5) At 17:31:44, the ABN AMRO Client entered a DMA Order (through ABN AMRO's Automated Order Processing or AOP system) into the Trading Platform to buy 200 IBF3 at 95.900 ("Relevant Order"). The Relevant Order was also at a price 117 basis points lower than the prior IBF3 DSP of 97.070.
- 6) The Relevant Order was able to enter into the Trading Platform as ABN AMRO's AOP system had the MPC limit set at 999.9 basis points on the instance of the ABN AMRO Client's Client Account for ASX 30 Day Interbank Cash Rate Futures Contracts.
- 7) The Relevant Order Traded immediately and in full with the Counterpart Order and resulted in deal numbered 282 for 200 IBF3 at 95.900 ("Relevant Deal").
- 8) The Relevant Deal was the first Trade in IBF3 since publication of the DSP of 97.070 and was approximately \$600,000 below market value.
- 9) The Traded price of 95.900 placed the Relevant Deal in the Mandatory Cancellation Range as per rule [3210] of the ASX 24 Operating Rules at the relevant time, however the Relevant Deal was not cancelled.

By reason of ABN AMRO's failure to demonstrate prudent risk management procedures, failing to set and document MPC limits for the ABN AMRO Client on 23 November 2011, the MDP has reasonable grounds to believe that ABN AMRO has contravened MIR 2.2.1(1)(b) 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 ABN AMRO to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 2.2.1(1)(b), is \$1,000,000.

The maximum pecuniary penalty that may be payable by ABN AMRO under an infringement notice given pursuant to subsection 798K(2) of the Act, by allegedly contravening MIR 2.2.1(1)(b), 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 ABN AMRO must pay to the Commonwealth is **\$40,000**.

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 2.2.1(1)(b) is aimed at ensuring that all Market Participants must at all times have and maintain appropriate controls to ensure that Orders submitted by them into a Trading Platform do not interfere with the integrity of the market;
- Market Participants are specifically required to set and document appropriate pre-determined Order and/or position limits on each Client Account. They are also required to set and document appropriate MPC limits on each Client Account.
- Setting MPC limits at a maximum or default setting of 999.9 basis points is inadequate and does not demonstrate prudent risk management procedures for a Market Participant with DMA Clients;
- The breach had the potential to damage the reputation and integrity of the Market. ABN AMRO's MPC limit of 999.9 basis points for ASX 30 Day Interbank Cash Rate Futures Contracts in the instance of the ABN AMRO Client's Client Account was inadequate. It failed to prevent the Relevant Order from entering into the Trading Platform resulting in the Relevant Deal Trading at 95.900, being at a price 117 basis points lower than the prior IBF3 DSP of 97.070 and representing a value approximately \$600,000 away from fair value;
- The breach was careless on the part of ABN AMRO. Despite ABN AMRO having procedures in place to determine and set MPC limits for Client Accounts, ABN AMRO in this instance neglected to set and document MPC limits for the ABN AMRO Client, instead relying on the inadequate maximum or default level of 999.9 basis points for ASX 30 Day Interbank Cash Rate Futures Contracts;
- The MDP reiterated that Market Participants ought to take proper care and exercise diligence in the setting and documentation of appropriate limits for every DMA Client. This is a critical measure in maintaining the integrity of a market;
- ABN AMRO did not derive any actual or potential benefit from the breach;
- ABN AMRO took the following remedial measures to prevent recurrence of the breach:
  - amended its MPC limits on the instance of the ABN AMRO Client's Client Account;

- introduced a 'global risk policy' that includes a section on pre-trade filter functionalities;
  - completed a global project to assess its controls and review of pre-trade filter functionalities in all systems;
  - introduced a periodic limit review procedure for its risk department and DMA team;
  - reviewed and updated various procedures including the on-boarding procedure and the limit change procedure;
  - developed and implemented a query tracking tool to document all limit change requests;
  - expanded its DMA team; and
  - made improvements to its general compliance function, including recruiting new staff, developing new systems and having regular reviews by its parent entity.
- ABN AMRO had no prior contraventions found against it by the MDP for non-compliance with the ASIC Market Integrity Rules (ASX 24 Market) 2010, but had been sanctioned by the ASX Disciplinary Tribunal on one occasion relating to non-compliance with the Operating Rules of the Sydney Futures Exchange (ASX Circular 297/11 dated 29 December 2009);
  - ABN AMRO had one prior contravention found against it by the MDP for non-compliance with the ASIC Market Integrity Rules (ASX Market) 2010 (Infringement Notice MDP08/13 dated 30 October 2013), and had been sanctioned by the ASX Disciplinary Tribunal on one occasion relating to non-compliance with the ASX Market Rules (ASX Circular 264/09 dated 12 August 2009);
  - ABN AMRO co-operated with ASIC throughout its investigation and did not dispute any material facts; and
  - ABN AMRO agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

### Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

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

The effects of compliance with this infringement notice are:

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

"Client" means in relation to a Market Participant, any person, partnership or Corporation on behalf of whom the Market Participant enters, Acquires or Disposes of a Futures Contract or Option Contract, or on whose behalf the Market Participant proposes to enter, Acquire or Dispose of a Futures Contract or Option Contract or from whom the Market Participant accepts instructions to enter, Acquire or Dispose of Futures Contracts or Option Contracts.

"Client Account" means an account of a Client.

"Contract" means a contract entered, Acquired or Disposed of on the Market or capable of being entered, Acquired, or Disposed of on the Market.

"Futures Contract" means a Contract designated as a "Futures Contract" by the Market Operator in the Market Operating Rules.

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

"Market Operating Rules" means the Operating Rules of the Market.

"Market Operator" means Australian Securities Exchange Limited (ACN 000 943 377).

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

"Order" means an instruction to enter into a Contract, or an instruction to amend or cancel a prior instruction to enter into a Contract.

"Rules" means the ASIC Market Integrity Rules (ASX 24 Market) 2010.

"Trade" and similar expressions means "trade" as defined in section 9 of the Act.

"Trading Platform" means a facility made available by the Market Operator to Market 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:

"Automated Order Processing" or "AOP" means the electronic process by which Orders are registered and routed in a Market Participant's trading system, and, if accepted for submission into a Trading Platform by the Market Participant submitted as corresponding Trading Messages without human intervention.

"Daily Settlement Price" or "DSP" means the official daily quotation for each Contract entered, acquired, or disposed of on a Market for each delivery or cash settlement month as determined by the ASX for the purpose of margining and settling by the approved clearing facility.

"Direct Market Access" or "DMA" means an Order submitted by a Client of a Market Participant into the Market Participant's trading system and subject to Automated Order Processing.

"Mandatory Cancellation Range" means the range set out in procedure 3200 of the ASX 24 Operating Rulebook Procedures as defined in rule [7100] of section 7 of the ASX 24 Operating Rules as at 23 November 2011.

"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 transactions on the Trading Platform.