



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

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Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Commonwealth Securities 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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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**PART 7.2A OF THE CORPORATIONS REGULATIONS 2001
INFRINGEMENT NOTICE**

To: Commonwealth Securities Limited
Ground Floor, Darling Park Tower 1
201 Sussex Street
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Commonwealth Securities Limited ACN 067 254 399 ("CommSec") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice CommSec must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$15,000.**

This infringement notice is given on 24 September 2014.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP4276/14.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 ("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

CommSec was a Participant of the Markets operated by ASX and Chi-X Australia 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.

CommSec is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 4.3.2 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 ("MIR 4.3.2") which, up to and including 27 March 2013, provided:

"A Participant that operates a Crossing System during a calendar month must, within 20 business days of the end of the calendar month:

- (a) prepare a report (the Crossing System Monthly Report) for that calendar month setting out:*
 - (i) any changes to the information provided in the Crossing System Initial Report;*
 - (ii) for each day during the calendar month on which Orders were received or Transactions were matched or executed on the Crossing System, Crossing System Reporting Information for each relevant Equity Market Product for that day; and*

(b) *provide the Crossing System Monthly Report to ASIC.*"

From 28 March 2013, the words "*relevant Equity Market Product*" in subparagraph MIR 4.3.2(a)(ii) were replaced with the words "*Relevant Product*".

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

- 1) From on or around 16 May 2011 to 23 May 2013, CommSec operated a certain Crossing System ("CommSec Crossing System") and was required to prepare and provide to ASIC Crossing System Monthly Reports ("CSMRs") in relation to the CommSec Crossing System, in accordance with MIR 4.3.2.
- 2) Between March 2012 and June 2013 inclusive ("Relevant Period"), CommSec prepared and provided to ASIC 16 CSMRs ("Relevant CSMRs") in relation to the CommSec Crossing System for the calendar months of February 2012 through to May 2013.
- 3) CommSec relied on a third party data vendor ("Vendor") to provide Crossing System Reporting Information ("CSRI") in the preparation of the Relevant CSMRs. The Relevant CSMRs did not contain all the required CSRI for the calendar months from February 2012 to May 2013. This was because on 22 February 2012, the Vendor began purging certain data or information in excess of seven days old used in compiling the CSRI. CommSec relied on representations that the data purge would not affect other processes.
- 4) On 4 April 2013, ASIC informed CommSec of a decline in Crossing System turnover in the Relevant CSMRs for the period August 2012 to January 2013.
- 5) CommSec subsequently undertook an internal review and on 31 July 2013, in accordance with paragraph 912D(1)(a) of the Act, notified ASIC that the Relevant CSMRs did not contain all the required CSRI; and that CommSec would re-provide the Relevant CSMRs inclusive of all the required CSRI ("Revised Relevant CSMRs") to ASIC.
- 6) On 14 August 2013, CommSec provided the Revised Relevant CSMRs to ASIC.
- 7) On 25 October 2013, CommSec deregistered the CommSec Crossing System as a Crossing System.

By reason of CommSec's failure to include all the required CSRI in the preparation of the Relevant CSMRs it provided to ASIC during the Relevant Period, the MDP has reasonable grounds to believe that CommSec has contravened MIR 4.3.2 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 CommSec to pay for contravening subsection 798H(1) of the Act by reason of contravening MIR 4.3.2, is \$100,000.

The maximum pecuniary penalty that may be payable by CommSec under an infringement notice given pursuant to subsection 798K(2) of the Act by reason of allegedly contravening MIR 4.3.2, is \$60,000.

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 CommSec must pay to the Commonwealth is **\$15,000**.

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 4.3.2 is primarily aimed at assisting ASIC in ensuring the integrity of markets. Imposing a strict obligation on Participants that operate Crossing Systems to prepare and provide accurate CSMRs to ASIC, is critical to ASIC's role in maintaining and facilitating fair and efficient markets and to continue to effectively carry out its responsibility for market supervision in the context of a changing market environment;
- Although the misconduct did not appear to directly impact the integrity of markets, it did however inhibit ASIC's function of supervising and ensuring the integrity of markets;
- The misconduct was careless on the part of CommSec. Despite CommSec's reliance on the Vendor to provide CSRI, CommSec neglected to ensure that the Relevant CSMRs it prepared and provided to ASIC contained all the required CSRI;
- The misconduct transpired over an unacceptable period of time of 16 months;
- The breach was not an isolated incident, rather it recurred multiple times throughout the Relevant Period;
- CommSec failed to detect the breach. CommSec only became aware of the breach after being informed by ASIC on 4 April 2013 of a decline in Crossing System turnover in the Relevant CSMRs for the period August 2012 to January 2013;
- CommSec did not gain any benefit, nor did it cause any detriment, as a result of the misconduct;
- CommSec took steps to prevent recurrence of the breach including:
 - undertaking an internal review;
 - allocating additional IT resources to recreate and test CSMRs provided to ASIC; and
 - arranging for the Vendor from 24 June 2013 to purge data in excess of 45 days old.

- CommSec had three prior contraventions found against it by the MDP for non-compliance with the market integrity rules. Since 2008, CommSec had also been sanctioned on three occasions by the ASX Disciplinary Tribunal for non-compliance with the ASX Market Rules;
- CommSec cooperated with ASIC throughout its investigation and did not dispute any material facts; and
- CommSec agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

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

Dated: 24 September 2014

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 as at the Relevant Period (as amended from time to time) have the same meaning when used in this notice, including:

"ASX" means ASX Limited (ACN 008 624 691).

"CGS Depository Interest" has the same meaning given by section 761A of the Act.

"Crossing System" means any automated service provided by a Participant to its clients which matches or executes Client Orders with Orders of:

- (a) the Participant; or
- (b) other clients of the Participant,

otherwise than on an Order Book.

"Crossing System Initial Report" has the meaning given by Rule 4.3.1.

"Crossing System Monthly Report" has the meaning given by Rule 4.3.2.

"Crossing System Reporting Information" has the meaning given by Rule 4.3.3.

"Equity Market Product" means:

- (a) a share in a body;
- (b) a Financial Product referred to in subparagraph 764A(1)(b)(i) or subparagraph 764A(1)(ba)(i) of the Act;
- (c) a right (whether existing or future and whether contingent or not) to acquire, by way of issue, the following under a rights issue:
 - (i) a share covered by paragraph (a); or
 - (ii) a Financial Product covered by paragraph (b); or
- (d) a CHESSE Depository Interest,

admitted to quotation on the ASX Market, but does not include a CGS Depository Interest.

"Market" means a Financial Market, on or through which offers to acquire or dispose of Financial Products are made or accepted, the operator of which is licensed under subsection 795B(1) of the Act.

"Order" means an instruction to purchase or sell Financial Products, or an instruction to amend or cancel a prior instruction to purchase or sell Financial Products.

"Participant" means a person that is a participant, within the meaning of section 761A of the Act, of a Market.

"Transaction" means a transaction in a Financial Product.

This notice adopts the following additional definitions of terms:

"Chi-X Australia" means Chi-X Australia Pty Ltd (ACN 129 584 667).

"Relevant Product" means Equity Market Products and CGS Depository Interests.

"Rules" mean these market integrity rules or the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011.