



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

No. MDP04/15, Wednesday 9 December 2015

Published by ASIC

# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

#### Recipient: Australian Investment Exchange 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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](http://www.asic.gov.au)

ISSN 1445-6060 (Online version)  
ISSN 1445-6079 (CD-ROM version)

Available from [www.asic.gov.au](http://www.asic.gov.au)  
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**To:** Australian Investment Exchange Limited  
Ground Floor Tower 1  
201 Sussex Street  
SYDNEY NSW 2000

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Australian Investment Exchange Limited ACN 076 515 930 ("AUSIEX") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice AUSIEX must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$130,000**.

This infringement notice is given on 29 October 2015.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP1179/15.

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**

AUSIEX 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.

AUSIEX is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 5.6.3(a) and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.3(a)" and "MIR 5.9.1").

At the relevant time, MIR 5.6.3(a) provided:

*"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 filters 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;"*

The rule has since been amended to reflect developments in Trading Participants' systems and ASIC's expectations of those systems.

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 Markets Disciplinary Panel ("MDP") was satisfied that:

- 1) On 27 March 2014 at 12:18:37, a representative ("Representative") of a Direct Market Access ("DMA") client of AUSIEX ("Client") entered an Order into one of AUSIEX's Automated Order Processing ("AOP") systems to sell 436 Westpac Banking Corporation American Call Option contracts, having ASX code 'WBCWZ9', at a price of \$0.005 per contract ("Relevant Order").
- 2) At 12:18:51.319, without any automated filter alerts or warnings being triggered, AUSIEX's AOP system submitted the Relevant Order into the ASX Trading Platform.
- 3) Immediately prior to the submission of the Relevant Order through AUSIEX's AOP system into the ASX Trading Platform, the priority Bid for WBCWZ9 was \$0.475 and the last traded price was \$0.520.
- 4) The Relevant Order transacted in full on the ASX Trading Platform resulting in the following three Market Transactions:
  - at 12:18:51.319, a Market Transaction for 137 WBCWZ9 by matching with and consuming the entire priority Bid at \$0.475 ("Trade 1");
  - at 12:18:51.320, a Market Transaction for 200 WBCWZ9 at \$0.005 ("Trade 2"); and
  - at 12:18:51.320, a Market Transaction for 99 WBCWZ9 at \$0.005 ("Trade 3").
- 5) The Market Transactions at \$0.005 caused the price of WBCWZ9 to decrease by \$0.515, being 99% lower than the last traded price prior to the entry of the Relevant Order.
- 6) At approximately 12:25:00, another representative of the Client notified AUSIEX that the Relevant Order had been entered at an erroneous price. AUSIEX then sought cancellation of Trades 1, 2 and 3. At 12:38:21, ASX cancelled Trades 2 and 3.
- 7) AUSIEX subsequently conducted an investigation and initially determined as follows. That of the users granted access to enter Orders via AUSIEX's AOP system ("Authorised Persons") during the period 31 January 2011 to 31 October 2014, 11 Authorised Persons (including the Representative), did not have the following automated filters ("Market Vetting Filters") applied to their Orders:
  - Valid price steps (Bid/Ask);
  - Valid price steps from last trade;
  - Percentage from Bid/Ask;

- Percentage from last trade; and
  - Small order value.
- 8) On 28 March 2014, AUSIEX applied Market Vetting Filters to the Representative and on 31 March 2014, applied the same to the remaining 10 Authorised Persons.
- 9) AUSIEX's investigation further identified that Orders entered by the 11 Authorised Persons had not been subject to the Market Vetting Filters for the following reasons:
- the Market Vetting Filters had not been manually applied when the Authorised Person was granted connectivity; or
  - the Authorised Person's settings were 'mirrored' from another Authorised Person who had been initially granted connectivity without Market Vetting Filters.
- 10) Relevantly, when the Representative was given connectivity to AUSIEX's AOP system, AUSIEX had failed to apply the Market Vetting Filters.
- 11) This failure occurred because the electronic request to grant the Representative connectivity had requested that the IT team 'mirror' the settings of another Authorised Person who did not have Market Vetting Filters correctly applied at origination. The Authorised Person whose settings were 'mirrored' did not have Market Vetting Filters applied because the request to provide that person with trading access did not specifically state that Market Vetting Filters were required.
- 12) The AUSIEX investigation also examined the effectiveness of the AOP Annual Review and Quarterly Market Access Reviews given both types of reviews had failed to detect the absence of Market Vetting Filters for the 11 Authorised Persons. It found:
- the most recent Annual Review was ongoing as at the date of the Relevant Order. The review team had been given data which incorrectly showed that Market Vetting Filters were in place for the 11 Authorised Users, although the review had been suspended to obtain further data which should have identified the issue;
  - the preceding Annual Review had not identified the issue because the staff conducting the review did not properly understand the application of the filters in AUSIEX's AOP system; and
  - the Quarterly Market Access Reviews did not provide sufficient detail to confirm whether Market Vetting Filters on the instance of AUSIEX's AOP system were applied, active and functioning, at an individual account or user level.

By reason of AUSIEX's entry of the Relevant Order into the ASX Trading Platform on 27 March 2014, the MDP has reasonable grounds to believe that AUSIEX has contravened MIR 5.6.3(a) and MIR 5.9.1 and thereby contravened subsection 798H(1) of the Act in that:

- AUSIEX failed to have in place organisational and technical resources, including having:
  - automated filters or Market Vetting Filters as appropriate, for all Authorised Persons between 31 January 2011 and 31 March 2014; and

- processes to detect Authorised Persons trading without appropriate automated filters in place;

which interfered with the efficiency and integrity of the Market; and

- AUSIEX's misconduct resulted in a market not being both fair and orderly as the Relevant Order caused the price of WBCWZ9 to decrease from \$0.520 to \$0.005, being a decrease of 99%.

### Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order AUSIEX to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 5.6.3(a), is \$1,000,000;
- by reason of contravening MIR 5.9.1, is \$1,000,000.

### Penalty under the Infringement Notice

The maximum pecuniary penalty that may be payable by AUSIEX 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;
- by reason of allegedly contravening MIR 5.9.1, is \$600,000.

The penalties payable under this infringement notice for the two alleged contraventions of subsection 798H(1) of the Act are as follows:

- MIR 5.6.3(a) – \$95,000;
- MIR 5.9.1 – \$35,000.

Therefore, the total penalty that AUSIEX must pay to the Commonwealth is **\$130,000**, being the penalty payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act.

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:

- 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 automated filters in place; and
- fully functional or effective processes to detect when appropriate automated filters are not in place;
- Appropriate automated filters are essential components of AOP systems used by DMA clients of Trading Participants. Appropriate automated filters are in place to ensure DMA client Orders entered through Trading Participant AOP systems are submitted into the Trading Platform without interfering with market integrity. For this reason, it is incumbent on Trading Participants to ensure that their AOP systems have appropriate automated filters in place, and that their AOP systems comply with the market integrity rules. Accordingly, Trading Participants must have robust and effective processes and controls to detect when appropriate automated filters are not in place. This includes:
  - having skilled staff and technical capabilities that are commensurate with the demands of using a system for AOP; and
  - fostering a culture conducive to compliance with the market integrity rules (e.g. effective educational and compliance programs);
- AUSIEX 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 fully functional or effective processes to detect Authorised Persons trading without appropriate automated filters in place. The failure of AUSIEX to ensure that its AOP system had these safeguards risked undermining public confidence in the integrity of the market;
- MIR 5.9.1 is similarly 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 submission of the Relevant Order into the ASX Trading Platform through AUSIEX's AOP system caused the price of WBCWZ9 to decrease from \$0.520 to \$0.005, being a significant decrease or variability of 99%, which had the potential to impact the market;
- While there were two alleged breaches of the market integrity rules, being one of MIR 5.6.3(a) and one of MIR 5.9.1, both alleged breaches arose from a single course of conduct;
- The misconduct was of a serious nature as it had the potential to undermine confidence in the integrity of the market;
- The misconduct was careless on the part of AUSIEX. AUSIEX neglected to ensure that at all times its AOP system had in place or had activated, appropriate automated filters in relation to all Authorised Persons. The misconduct was also indicative of a systemic failure including across Trading, Compliance and IT;
- Increased caution and diligence ought to be exercised by Trading Participants in the 'mirroring' of accounts or otherwise. Each request for access to any system ought to be considered individually and on its merits and not merely copied over from another user's identical access;



- The misconduct was particularly egregious as it transpired over an unacceptable length of time being a period of up to approximately 38 months;
- AUSIEX re-executed Trade 1 at an improved price so that the Client was not disadvantaged. Although the misconduct did not appear to result in any benefit to AUSIEX or detriment to other third parties, the potential to gain benefit or cause detriment through unrestricted or un-vetted AOP system access, was real and apparent;
- While the MDP had regard to AUSIEX self-reporting the breach of MIR 5.6.3 to ASIC, it also noted that a representative of the Client initially notified AUSIEX, and made AUSIEX aware, that the Relevant Order had been entered at an erroneous price;
- AUSIEX took immediate action on becoming aware of the Relevant Order in accordance with relevant ASX Operating Rules Procedures, to facilitate cancellation of Trade 2 and Trade 3;
- AUSIEX took steps to prevent recurrence of the breaches, including:
  - immediately instigating an investigation into the cause of the resultant Market Transactions;
  - on 28 March 2014, applying the Market Vetting Filters to the Client's account;
  - on 31 March 2014, applying the Market Vetting Filters to the 10 other relevant client accounts;
  - no longer permitting connectivity requests by way of 'mirroring' accounts;
  - introducing an automated solution for the granting of connectivity to new accounts;
  - refreshing procedure documentation to include the requirement of two independent sign-offs/approvals from senior management prior to the creation of new user accounts or filter amendments being actioned;
  - amending review procedures including to the Quarterly Market Access Review to ensure that automated filters have been applied to new accounts;
  - training of all relevant AUSIEX staff by an AOP system subject matter expert including in user and account creation, and the setting of appropriate automated filters; and
  - adding a new staff member whose role is to ensure all AOP system administration functions are performed correctly;
- AUSIEX had no prior contraventions found against it by the MDP, but had been sanctioned by the ASX Disciplinary Tribunal on three occasions relating to non-compliance with the ASX Market Rules. In addition, AUSIEX offered and ASIC accepted an Enforceable Undertaking in 2013 regarding unrelated conduct;
- AUSIEX co-operated with ASIC throughout its investigation and did not dispute any material facts; and

- AUSIEX agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

### **Compliance with the Infringement Notice**

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

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

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

unless an application is made for its extension.

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

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

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

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

The effects of compliance with this infringement notice are:

- (a) any liability of AUSIEX to the Commonwealth for the alleged contraventions of subsection 798H(1) of the Act is discharged;
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against AUSIEX for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions 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 AUSIEX for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act;
- (d) AUSIEX is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) AUSIEX 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: 29 October 2015

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:

"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.

"Bid" relevantly means, in relation to a Derivatives Market Contract, an offer to enter into a Derivatives Market Transaction in respect of the relevant Derivatives Market Contract as Buyer.

"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" relevantly means, 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.

"Product" means a Cash Market Product or a Derivatives Market Contract, as applicable.

"Trading Participant" means a Market Participant which has Trading Permission in respect of one or more Products.

"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.