



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

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# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

**Recipient:** Macquarie Securities (Australia) 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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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)

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**To: Macquarie Securities (Australia) Limited  
c/- Macquarie Bank Limited  
Level 6  
48-50 Martin Place  
SYDNEY NSW 2000**

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Macquarie Securities (Australia) Limited ACN 002 832 126 ("Macquarie Securities") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Macquarie Securities must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$110,000.**

This infringement notice is given on 30 October 2015.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP22404/14.

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

### **Alleged contravention and penalty**

Macquarie Securities 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.

Macquarie Securities is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 2.5.3 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 2.5.3"), which provides:

*"A Trading Participant must ensure that only its DTRs submit Trading Messages into the Trading Platform through the Trading Participant's system, unless the trading is conducted in accordance with the Automated Order Processing Requirements."*

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

- 1) Macquarie Securities is ultimately owned by Macquarie Group Limited ACN 122 169 279 ("Macquarie Group"). Macquarie Group has a number of business units which are not legal entities, of which Macquarie Securities Group ("MSG") is one. Macquarie Securities is part of MSG.
- 2) Macquarie Securities uses a trading system supplied by a third party vendor to access the Trading Platform. This system has a number of components, including an automated trading application ("Automated System"), which is a certified Automated Order Processing ("AOP") system, and a manual trading application ("Manual System"), which is designated for use by Macquarie Securities' DTRs and is not a certified AOP system.
- 3) On 7 March 2011, MSG representatives approved a non-DTR Macquarie Securities Employee ("Employee 1") for access to the Automated System. Although it appeared that the intention of this approval was to provide authorised access to the Automated System only, the request and approval procedure for trading system access was conducted by email and did not explicitly specify the actual part(s) of the trading system and access level(s) being sought and approved.
- 4) Following this approval, at some unknown time, MSG Information Technology erroneously gave Employee 1 the ability to access the Manual System. Employee 1 never utilised their access to the Manual System.
- 5) On 19 December 2011, MSG representatives approved a new trading system account for a second non-DTR Macquarie Securities Employee ("Employee 2"), which was to be created on the basis that it 'replicated' Employee 1's account. Again, although it appeared that the intention of this approval was to provide authorised access to the Automated System only, the request and approval procedure for trading system access was conducted by email and did not explicitly specify the actual part(s) of the trading system and access level(s) being sought and approved.
- 6) On or about 19 or 20 December 2011, Employee 2's trading system access was replicated from Employee 1's account, which resulted in Employee 2 also obtaining the ability to access the Manual System, when Employee 2 should only have been able to access the Automated System. At the time, it appeared that Employee 2 was unaware of these circumstances.
- 7) Employee 2 did utilise their access to the Manual System. Between 27 January 2012 and 12 April 2012 ("Relevant Period"), Employee 2 submitted 446 Trading Messages into the Trading Platform through the Manual System. These 446 Trading Messages comprised 402 Orders to buy or sell Products and 44 instructions to cancel Orders, and were entered over 42 of the 53 Trading Days during the Relevant Period. They were entered on behalf of Macquarie Bank Limited ACN 008 583 542, which is also ultimately owned by Macquarie Group, and not on behalf of any Macquarie Securities client.
- 8) Between 7 March 2011 and 12 April 2012, MSG conducted quarterly user access reviews to identify persons with access to the trading system. These user access reviews did not identify Employee 1's ability to access the Manual System due to an error with the script

used to generate the user access review reports, and because Employee 1 did not trade through the Manual System.

- 9) Employee 2's access to the Manual System was identified by Employee 2 on 12 April 2012. It was not identified in the December 2011 user access review because the report was generated prior to Employee 2 trading. It was identified in the April 2012 user access review, which was performed on 16 April 2012.
- 10) Macquarie Securities removed Employee 1's access to the Manual System on 12 April 2012. Some time after the close of trading on the Market on 12 April 2012 and before the Market opening on 13 April 2012, Macquarie Securities also removed Employee 2's access to the Manual System.
- 11) Upon becoming aware of the breach the subject of this matter, Macquarie Securities determined that it was not significant to require notification to ASIC under section 912D of the Act. Pursuant to section 990K of the Act, Macquarie Securities' auditors ("Auditors") lodged a written report dated 26 June 2013 with ASIC pursuant to section 990K of the Act, flagging the breach the subject of this matter as significant.

By reason of a non-DTR submitting 446 Trading Messages into the Trading Platform through Macquarie Securities' system which did not comply with the Automated Order Processing Requirements between 27 January 2012 and 12 April 2012, the MDP has reasonable grounds to believe that Macquarie Securities has contravened MIR 2.5.3 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 Macquarie Securities to pay for contravening subsection 798H(1) of the Act, by reason of contravening MIR 2.5.3, is \$1,000,000.

The maximum pecuniary penalty that may be payable by Macquarie Securities under an infringement notice given pursuant to subsection 798K(2) of the Act, by reason of allegedly contravening MIR 2.5.3, 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 Macquarie Securities must pay to the Commonwealth is **\$110,000**.

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:

- Remedies applied by the MDP should promote market integrity along with confident and informed participation of investors in financial markets;
- MIR 2.5.3 requires that all Trading Messages be submitted through manual trading systems by appropriately trained people (DTRs) or through automated trading systems with appropriate hard automated filters. MIR 2.5.3 is therefore a critically important measure in maintaining the integrity of the market, by facilitating the conduct of a fair, orderly and transparent market;
- Although the 446 Trading Messages did not have any actual improper impact on the market, the misconduct did nevertheless have the potential to interfere with the integrity of the market. This potential was mitigated somewhat by the fact that Trading Messages submitted by Employee 2 through the Manual System passed through four soft automated filters (of which three could be overridden by Employee 2 in any case) prior to entering into the Trading Platform, and by the fact that Employee 2 was experienced. Notwithstanding this, such mitigation in itself does not absolve Macquarie Securities of the misconduct giving rise to the breach which is considered to be of a serious nature;
- The misconduct was careless. While Macquarie Securities had procedures in place for the request and approval of trading system access by various appropriate personnel, these procedures failed to prevent the misconduct due to instances of appropriate personnel not exercising due care and skill. Furthermore, these procedures failed to prevent the creation of new trading system account settings by 'replication' with an access level which was not the same as the approved access level. As a result, the misconduct giving rise to the breach, was indicative of a systemic failure including across Trading, Legal, Compliance and Information Technology;
- Increased caution and diligence ought to be exercised by Trading Participants in the 'replication' of accounts or otherwise. Each application for access to any system ought to be considered individually and on its merits and not merely copied over from another person's identical access;
- Although Macquarie Securities also had review procedures in place to identify persons with access to the trading system at quarterly intervals, these review procedures failed to assist in detecting Employee 2's unauthorised access to the Manual System;
- Employee 2 used the Manual System to submit Trading Messages into the Trading Platform for a period of approximately three months. Permitting a non-DTR to have and use DTR-level access for any period of time is unacceptable. For that period of time to be approximately three months is particularly problematic given the increased potential to interfere with the integrity of the market;
- While the MDP had regard to Macquarie Securities' determination that the breach was not significant such as to require notification to ASIC pursuant to section 912D of the Act, it also noted that Macquarie Securities' Auditors considered the breach to be significant and reported it to ASIC pursuant to section 990K of the Act;

- Although the misconduct did not result in any benefit to Macquarie Securities or detriment to third parties, the potential to gain benefit or cause detriment was real and apparent;
- There was one alleged breach of MIR 2.5.3;
- Macquarie Securities took steps to prevent recurrence of the breach, including:
  - preventing replication of another user's trading system access level;
  - requiring all trading system access requests to specify the actual system and access level being sought;
  - expanding the list of people required to approve trading system access;
  - providing relevant training to relevant Employees;
  - updating its procedures for approving DTRs and granting DTR-level access; and
  - implementing a new daily report designed to identify new users with DTR-level access and Orders placed into the Manual System by non-DTRs;
- Macquarie Securities had no previous contraventions found against it by the MDP regarding non-compliance with the market integrity rules, but had previously been sanctioned by the ASX Disciplinary Tribunal regarding non-compliance with the ASX Market Rules on four separate occasions since 2007, for unrelated conduct;
- Macquarie Securities co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- Macquarie Securities agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

### Compliance with the Infringement Notice

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

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

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

unless an application is made for its extension.

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

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

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

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

The effects of compliance with this infringement notice are:

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

Dated: 30 October 2015.



## 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" or "AOP" 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.

"Automated Order Processing Requirements" means the requirements of Part 5.6.

"DTR" means a Representative of the Trading Participant who has been authorised by the Trading Participant to submit Trading Messages to the Trading Platform on behalf of the Trading Participant.

"Employee" in relation to a Market Participant includes a director, employee, officer, agent, representative, consultant or adviser of that Market Participant, or an independent contractor who acts for or by arrangement with a Market Participant.

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

"Market Operator" means ASX.

"Order" 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 Day" means a day on which Market Transactions may be entered into by Trading Participants on a Trading Platform.

"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 Market Transactions on the Trading Platform.

"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.