



**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Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn.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 **\$45,000.**

This infringement notice is given on 11 March 2016.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP10173/15.

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

ABN AMRO was a Market Participant in the Market operated by the Australian Securities Exchange Limited ACN 000 943 377 at the relevant time and was therefore, an entity required by subsection 798H(1) of the *Corporations Act 2001* ("the Corporations Act") to comply with the market integrity rules at that time.

ABN AMRO is alleged to have contravened subsection 798H(1) of the Corporations Act by reason of contravening Rule 3.3.1A(1) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 3.3.1A(1)") on two occasions.

MIR 3.3.1A(1) provides:

*(1) If counterparties have been solicited by a Market Participant pursuant to Rule 3.3.1(1)(a), the Market Participant must:*

*(a) make an enquiry through the message facility of the Trading Platform for a market in that contract month or strategy;*

- (b) *wait until the period of time prescribed by the Market Operator in the Marketing Operating Rules, or in the procedures to the Market Operating Rules, has elapsed since the entry of the enquiry, or if no such time is prescribed, 30 seconds; and*
- (c) *then immediately enter the Order on the Trading Platform for execution.'*

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

*20 December 2013 ("Relevant Day One")*

- 1) At 13:33, an ABN AMRO Client ("ABN AMRO Client") received an instruction from one of its own clients ("Client 1") to buy 100 March 2014 ASX SPI 200 index Futures Contract Call Options ("APH458500C") at 'best' on the Market.
- 2) At 13:41:21, the ABN AMRO Client received an instruction to sell 100 APH458500C at 2.5 points from another of its own clients ("Client 2").
- 3) At 13:42:04, the ABN AMRO Client attempted to make an Enquiry through the message facility of the Trading Platform, but due to an error in ABN AMRO's trading application the Enquiry was not submitted to the Trading Platform.
- 4) At 13:42:21, the ABN AMRO Client entered the Order to buy 100 APH458500C via Direct Market Access ("DMA") through ABN AMRO's Terminal into the Trading Platform ("Relevant Order One").
- 5) At 13:42:21, the ABN AMRO Client entered the Order to sell 100 APH458500C via DMA through ABN AMRO's Terminal into the Trading Platform ("Relevant Order Two").
- 6) At 13:42:21, Relevant Order One transacted with Relevant Order Two, resulting in a Trade, being Relevant Trade One for 100 APH458500C at 2.5 points.
- 7) The ABN AMRO Client attempted to make a valid Enquiry through the message facility of the Trading Platform set out in ASX 24 Operating Rule Procedure 4401 prior to entering the Orders which resulted in Relevant Trade One, but was not successful.

*15 May 2014 ("Relevant Day Two")*

- 1) At 16:12, the ABN AMRO Client received an instruction from Client 1 to buy 100 June 2014 ASX SPI 200 index Futures Contract Call Options ("APM458500C") at 'best' on the Market.
- 2) At 16:17, the ABN AMRO Client received an instruction to sell 100 APM458500C at 2.5 points from another of its own clients ("Client 3").
- 3) At 16:18:56, the ABN AMRO Client attempted to make an Enquiry through the message facility of the Trading Platform, but due to an error in ABN AMRO's trading application the Enquiry was not submitted to the Trading Platform.
- 4) At 16:19:11, the ABN AMRO Client entered the Order to buy 100 APM458500C via DMA through ABN AMRO's Terminal into the Trading Platform ("Relevant Order Three").

- 5) At 16:19:11, the ABN AMRO Client entered the Order to sell 100 APM458500C via DMA through ABN AMRO's Terminal into the Trading Platform ("Relevant Order Four").
- 6) At 16:19:11, Relevant Order Three transacted with Relevant Order Four, resulting in a Trade, being Relevant Trade Two for 100 APM458500C at 2.5 points.
- 7) The ABN AMRO Client attempted to make a valid Enquiry through the message facility of the Trading Platform set out in ASX 24 Operating Rule Procedure 4401 prior to entering the Orders which resulted in Relevant Trade Two, but was not successful.

By reason of ABN AMRO's failure on 20 December 2013 and 15 May 2014 to make an Enquiry through the message facility of the Trading Platform and wait the prescribed period prior to entering the Orders which resulted in Relevant Trade One and Relevant Trade Two, respectively, the MDP has reasonable grounds to believe that ABN AMRO has contravened MIR 3.3.1A(1) on two occasions, and thereby contravened subsection 798H(1) of the Corporations 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 Corporations Act, by reason of contravening MIR 3.3.1A(1), is \$100,000.

### Penalty under the Infringement Notice

The maximum pecuniary penalty that may be payable by ABN AMRO under an infringement notice given pursuant to subsection 798K(2) of the Corporations Act, by reason of contravening MIR 3.3.1A(1), is \$60,000.

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

- MIR 3.3.1A(1) on 20 December 2013 - \$20,000 (Contravention 1); and
- MIR 3.3.1A(1) on 15 May 2014 - \$25,000 (Contravention 2).

Therefore, the total penalty that ABN AMRO must pay to the Commonwealth is **\$45,000**.

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 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 3.3.1A facilitates the aim of ensuring a fair, open and transparent trading system by requiring Market Participants to give others notice of intention to trade;

- MIR 3.3.1A was adopted from ASX 24 Operating Rule Procedure 4401 to ensure alignment with supervisory policy and procedure requirements to assist Market Participants of the Market to comply with the market integrity rules, operating rules and the Corporations Act;
- The contraventions on Relevant Day One and Relevant Day Two potentially reduced the transparency of the markets for APH458500C and APM458500C by not providing pre-trade information on the opposing Orders which transacted in Relevant Trade One and Relevant Trade Two;
- The contraventions also had the potential to damage the reputation and integrity of the markets for APH458500C and APM458500C because it impacted the fairness of the market, by preventing others from participating in Relevant Trade One and Relevant Trade Two;
- ABN AMRO did not self-report the breach to ASIC given ABN AMRO did not deem it reportable under s912D of the Corporations Act;
- There was no or minimal damage actually or potentially caused to a third party;
- The contraventions on Relevant Day One and Relevant Day Two were inadvertent;
- ABN AMRO had attempted to enter Enquiries on Relevant Day One and Relevant Day Two;
- ABN AMRO undertook remedial actions after Relevant Day Two in order to fix the issue with their message facility of the trading system to ensure that Enquires are delivered to the market. ABN AMRO also implemented additional measures to strengthen its post-trade control procedures;
- ABN AMRO has had two previous contraventions found against it by the MDP regarding non-compliance with the market integrity rules and has been sanctioned by the ASX Disciplinary Tribunal on one occasion relating to non-compliance with the SFE Operating Rules;
- ABN AMRO co-operated with ASIC throughout ASIC's 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 contraventions. 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 contraventions of subsection 798H(1) of the Corporations 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 contraventions of subsection 798H(1) of the Corporations Act;
- (c) no administrative action may be taken by ASIC under sections 914A, 915B, 915C or 920A of the Corporations Act against ABN AMRO for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Corporations Act;
- (d) ABN AMRO is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) ABN AMRO is not taken to have contravened subsection 798H(1) of the Corporations 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: 11 March 2016

### 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.

"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 the Australian Market Licence (Australian Securities Exchange Limited) 2002.

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

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

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

"Option" or "Option Contract" means an Option over:

- (a) a Futures Contract or a number of Futures Contracts; or
  - (b) an Option over an Underlying Physical,
- as listed by the Market Operator.

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

"Order System" means a software application, satisfactory to the Market Operator, for entering Orders into the Trading Platform through a Terminal.

"Terminal" means an automated Order entry interface through which an Order System routes Orders to the Trading Platform.

"Trade" and similar expressions means "trade" as defined in section 9 of the Corporations 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:

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

"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.

"Enquiry" means an enquiry made by a Market Participant through the message facility of the Trading Platform or the Trading Platform Request for Quote Facility for a market in a contract month or strategy.

"SFE Operating Rules" means the Operating Rules of Sydney Futures Exchange Limited (ACN 000 943 377).