

## **DISCIPLINARY MATTER – ABN AMRO Clearing Sydney Pty Ltd**

ABN AMRO Clearing Sydney Pty Ltd ("ABN AMRO") has paid a penalty of **\$45,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP").

The penalty was for ABN AMRO failing to make the necessary enquiries through the message facility of the ASX 24 Market and wait the prescribed period prior to entering orders for execution onto its trading platform as required by the relevant rule.

### **Background and circumstances**

ABN AMRO is alleged to have contravened subsection 798H(1) of the Corporations Act 2001 by reason of contravening Rule 3.3.1A(1) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 3.3.1A(1)").

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 Market 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 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 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**

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

The penalty payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Corporations Act and therefore the total penalty that ABN AMRO must pay to the Commonwealth is \$45,000, being \$20,000 in respect of Relevant Day One and \$25,000 in respect of Relevant Day Two.

### **Relevant factors**

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance 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.

### **The Markets Disciplinary Panel**

The MDP is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the Corporations Regulations 2001 ("Regulations").

### **Additional regulatory information**

This circular adopts the definition of Enquiry from the infringement notice given to ABN AMRO in this matter.

Pursuant to subparagraphs 7.2A.15(4)(b)(i) and (ii) of the Regulations, ABN AMRO has complied with the infringement notice, such compliance is not an admission of guilt or liability, and ABN AMRO is not taken to have contravened subsection 798H(1) of the Corporations Act.

Further information on market integrity infringement notices, the market integrity rules and the MDP is available in ASIC Regulatory Guide 216–*Markets Disciplinary Panel* and ASIC Regulatory Guide 225–*Markets Disciplinary Panel practices and procedures* or at <http://www.asic.gov.au> under "Regulatory Resources > Markets > Market Integrity Rules" and "Regulatory Resources > Markets > Markets Disciplinary Panel".