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Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: CLSA Australia 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*.

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ASIC
Australian Securities &
Investments Commission



Markets Disciplinary Panel

PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: CLSA Australia Pty Ltd
ACN 139 992 331
Level 35
225 George Street
SYDNEY NSW 2000

Matter: MDP 0315/24

Date given: 31 July 2024

TAKE NOTICE: The Australian Securities and Investments Commission (*ASIC*) gives this infringement notice to CLSA Australia Pty Ltd ACN 139 992 331 (*CLSA*) under regulation 7.2A.04 of the *Corporations Regulations 2001 (Regulations)*, which is made for the purposes of section 798K of the *Corporations Act 2001 (Act)*.

To comply with this notice, CLSA must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$144,300**.

Background

1. At all relevant times, CLSA was a Market Participant of the ASX Market and the Cboe Market.
2. On 16 January 2023, CLSA reported two Block Trades, also referred to as Special Crossings, in relative proximity in the security VAP:ASX (*Relevant Crossings*). The Relevant Crossings generated volume alerts on ASIC's surveillance systems. On review, ASIC noted that the 'buy' origin of order for the first Crossing was the same as the 'sell' origin of order for the second Crossing.
3. Following a query from ASIC, CLSA advised ASIC later that day that:
[The Relevant Crossings] *were put through in response to a wholesale client wishing to sell VAP at a volume of 482000. Given a lack of liquidity at the time, CLSA's client facilitation desk agreed to buy the stock at 79.49 and sell it to a market maker to unwind the position, who subsequently offered 79.58 for VAP at that volume. The client facilitation desk, who are based offshore, then informed one of CLSA Australia's dealers to put through the specials at those prices and volumes.*

On 31 January 2023, ASIC made further enquiries with CLSA:

1. *Why the broker capacity on the buy side – facilitation desk - flag is “Agency” and not “Principal”.*
 2. *The deals were transacted at 11.57 am, but reported the Specials a bit late at 12.24 pm.*
 3. *Overall, why are the two lines for the same volume, could there not have been one single line, why is it necessary to interpose between the client and the market-maker?*
4. Following further communications between ASIC and CLSA, on 15 February 2023 CLSA lodged a breach report which included the following information:
- *The trading activities of the Facilitation desk (based in Hong Kong) is regarded as principal activity and therefore its capacity should be tagged as “Principal”, rather than “Agency”.*
- The investigation into this matter established that:*
- *A technology change release for the global order management system (named Cobra) caused the default capacity tagging for the Facilitation traders to change from “Principal” to “Agency” (the “Cobra Tagging Issue”).*
 - *...*
 - *The issue impacted Regulatory Data obligations and Principal crossing notifications for wholesale clients who had not opted out of receiving them.*
 - *The technology fix to the Cobra Tagging Issue was implemented on the weekend of 4 February 2023.*
5. The breach report identified breaches of CLSA’s regulatory data obligations and client confirmation obligations. While the report identified the number of orders and trades impacted, these numbers were subsequently amended following further investigation by CLSA and ASIC.
6. On 21 February 2023, following further queries from ASIC, CLSA provided information regarding the technology change:
- We note that the Facilitation Traders in Hong Kong provides client facilitation services across multiple locations, including Japan and Australia. The relevant Cobra “Order Capacity” technology change release was intended to apply to the Japanese market only, where the Facilitation Traders’ orders should be tagged as “Agency”. However, for all other locations, the default tagging for the Facilitation orders should have continued to remain as “Principal”. Accordingly, the correct technology change for Japan, was wrongly applied to other locations as well and as a consequence, was an inadequate technology change (as it impacted*

other locations that did not require the change). That change has been reversed.

7. Following further requests from ASIC, CLSA provided additional information regarding the orders and trades impacted by the technology change referred to as the Cobra Tagging Issue and the timing of the Relevant Crossings.
8. As a result of these events, the MDP has reasonable grounds to believe that CLSA contravened the following obligations from the *ASIC Market Integrity Rules (Securities Markets) 2017 (Rules)*:
 - a. Rule 7.4.2, by providing regulatory data incorrectly identifying Orders and Trade Reports as ‘Agency’ instead of ‘Principal’ (***first alleged contravention***);
 - b. Rule 3.4.1, by failing to give post trade client confirmations for Principal Crossings (***second alleged contravention***); and
 - c. Rule 6.3.1(2)(a)(i), by failing to immediately report the Relevant Crossings (***third alleged contravention***);

and therefore contravened subsection 798H(1) of the Act.

First Alleged Contravention – Rule 7.4.2 Regulatory data reporting

9. Rule 7.4.2 of the Rules provides:
 - (1) *A Participant must provide Regulatory Data to a Market operator in an Order transmitted to an Order Book of that Market operator.*
 - (2) *A Participant must provide Regulatory Data to a Market operator in a Trade Report made to that Market operator, for each side of the transaction for which the Participant acted as agent on behalf of a client, or as Principal.*
10. Regulatory Data is defined in Rule 7.4.4. This Rule states:
 - (1) *In these Rules, **Regulatory Data** means:*
 - (a) *in relation to a Trade Report, the information set out in items 1 to 5 of the following table...*
 - (3) *ASIC may determine in writing format or content requirements for a code, notation or number referred to in the following table...*

Item	Label	Regulatory Data
2	Capacity of Participant	For each side (buy and/or sell) of the order or transaction on which the Participant is required to comply with subrule 7.4.2(1) or (2), a notation to identify whether the Participant is acting: (a) as Principal; (b) as agent for a client; or (c) as both Principal and agent for a client, in relation to the order or transaction

11. As a result of the technology change referred to by CLSA as the Cobra Tagging Issue, there were 72 incidents where CLSA incorrectly tagged orders received from its facilitation traders as 'Agency' instead of 'Principal' from 23 September 2022 to 3 February 2023.
12. Of these, 45 orders received by CLSA resulted in 9,243 Orders transmitted by CLSA to an Order Book of the relevant Market operator that did not correctly identify that CLSA was acting as Principal.
13. The remaining 27 were Reported as Agency and resulted in 27 Trade Reports transmitted by CLSA to the relevant Market operator that did not correctly identify that CLSA was acting as Principal.
14. The MDP considered that CLSA breached Rule 7.4.2(1) on 9,243 occasions in relation to the incorrect Orders provided to the relevant Market operator and Rule 7.4.2(2) on 27 occasions in relation to the incorrect Trade Reports provided to the relevant Market operator.
15. CLSA did not contest that it contravened Rules 7.4.2(1) and 7.4.2(2).
16. The MDP considered that this conduct should be treated as a single course of conduct from 23 September 2022 to 3 February 2023.

Second Alleged Contravention – Rule 3.4.1 Confirmations

17. Rule 3.4.1 provides:

(1) Subject to Rule 3.4.3, a Market Participant must give a confirmation to a person (the Client) in respect of each Market transaction entered into on the Client's instructions...
18. Rule 3.4.1(3) sets out the information that must be included in a confirmation.

19. Rule 3.2.3 provides:

When a Market Participant enters into a Market transaction with a person (the Client) as Principal, the confirmation issued by the Market Participant to the Client under Rule 3.4.1 in respect of that Market transaction must state that the Market Participant entered into the transaction as Principal and not as agent.

20. Rule 3.4.3 provides:

(1) A Market Participant is not required to comply with Rule 3.4.1 in respect of a client that is not a retail client, provided the Market Participant:

(b) subject to subrule (2), notifies the client as soon as practicable:

(i) if the Market Participant entered into the client's Market transaction as Principal; that the Market Participant entered into the Market transaction as Principal; and

(ii) if the client's Market transaction was executed as a Crossing, the execution code of the execution venue for the Crossing.

(2) A Market Participant does not have to give the notification in paragraph (1)(b) to a client if:

(a) the client has agreed not to receive such notifications...

21. As a result of a failure to tag 27 Principal Crossings correctly, CLSA failed to notify 14 wholesale clients in respect of 27 transactions that they were entered into as Principal and of the execution venue. CLSA had also not obtained their clients' agreement not to receive such notifications. Consequently, CLSA failed to satisfy the terms of Rule 3.4.3(1)(b) or 3.4.3(2) which would otherwise have relieved it from the obligation to comply with Rule 3.4.1 requiring it to issue a confirmation.

22. The MDP considered that CLSA breached Rule 3.4.1 on 27 occasions by failing to give post trade notification to its clients in relation to the 27 Principal Crossings.

23. CLSA did not contest that it contravened Rule 3.4.1.

24. The MDP considered that this conduct should be treated as a single course of conduct from 23 September 2022 to 3 February 2023.

Third Alleged Contravention – Rule 6.3.1(2)(a)(i) Post Trade transparency, reporting of transactions

25. Rule 6.3.1 provides:

(1) The Reporting Participant must report Post-Trade Information for a transaction entered into otherwise than by matching of Orders on an Order Book, to an Operator.

(2) The Reporting Participant must report Post-Trade Information for a transaction referred to in subrule (1):

(a) *subject to paragraph (b):*

(i) *if the transaction is matched or executed during Normal Trading Hours, immediately after the transaction is executed;*

26. The Relevant Crossings were executed at 11:57:30 and 11:58:17 AEST but, rather than being reported immediately, were not reported until 12:24:21 AEST and 12:24:54 AEST respectively, a delay of more than 25 minutes.
27. CLSA stated that the transactions involved the Hong Kong based Facilitation Desk agreeing to purchase 482,000 shares in VAP from the selling client at 11:57:30 and agreeing to sell 482,000 shares in VAP to the buying client at 11:58:17. It submitted that:

The two Crossings were reported at 12:22:21 and 12:24:54 respectively. The reason for the delay was because CLSA was waiting for the CLSA Japan Sales team to enter into the order management system (known as Cobra) the confirmed order details from the Selling Client for Crossing 1 in accordance with Japanese market practice. Although CLSA acknowledges that each Crossing is separate and individually required to be reported, in this instance it appears that the Facilitation Trader sought to reflect the sequence of the Crossings in the trade reports. As a result, the delay in reporting Crossing 1 had a flow-on effect in reporting Crossing 2. As soon as the required details for the Selling Client were entered into Cobra by the Japan Sales team, the DTR promptly reported Crossings 1 and 2 at 12:24:21 and 12:24:54 respectively, reflecting the order in which the Crossings were executed.

28. The MDP considered that CLSA breached Rule 6.3.1(2)(1)(a) by not reporting the Relevant Crossings immediately after the transactions were executed.
29. CLSA did not contest this contravention.
30. The MDP considered that this conduct should be treated as a single course of conduct on 16 January 2023.

The determination of penalty

31. In determining the appropriate penalty for each alleged contravention, the MDP considered the four key factors set out in *ASIC Regulatory Guide 216: Markets Disciplinary Panel (RG 216)*, namely:
- (a) the character of the conduct;
 - (b) the consequences of the conduct;
 - (c) the participant's compliance culture; and
 - (d) remedial steps taken by the participant.

Character of the conduct

32. The MDP considered the contraventions to be inadvertent on the part of CLSA as a Market Participant in reliance on the actions of its affiliated offshore entities, which could be characterised as careless.
33. The first and second contraventions both arose from a system change to CLSA's global order management system that was designed and implemented by the CLSA Group Technology team to address a particular change relevant only to the Japanese market. CLSA stated that it was not anticipated by the CLSA Group Technology team that there would be implications for the tagging of facilitation transactions on other markets. The MDP were concerned this system change was not adequately scoped and tested to capture potential unintended impacts in other jurisdictions.
34. The MDP considered that establishment and maintenance of technology systems is a fundamental responsibility of a Market Participant and the impact on CLSA in the Australian markets should have been identified. While the MDP considered the error may have been inadvertent on the part of CSLA, it was concerned that changes being made to the system CLSA Group Technology without appreciation of the global impact was a serious oversight.
35. The MDP considered that global participants need to be mindful that changes in one market may have implications for other markets where they operate. They need to identify these implications and engage with local market participants, such as Australian Markets Participants, to ensure any changes they make do not have adverse flow on effects that may cause the local participants to breach their obligations.
36. Similarly, in respect of the third contravention, it occurred as a result of a transaction facilitated offshore not being reported by CLSA's offshore affiliates in a timely manner in accordance with Australian requirements. The MDP considered that this situation again reinforced the need for global participants to ensure they have systems in place to ensure their local participants comply with their obligations from transactions facilitated offshore. The MDP also considered that CLSA as a Market Participant in Australia should take steps to ensure its offshore affiliates have sufficient understanding of the Rules that apply to their affiliated Market Participants in Australia.

Consequences of the conduct

37. The MDP considered the consequences of the first alleged contravention to be aggravating given the importance of reporting regulatory data to the maintenance of market integrity.
38. The MDP noted that providing accurate regulatory data is a core obligation of Market Participants. Regulatory data sent by Market Participants is used by ASIC to help carry out its mandated function of supervising and ensuring integrity of the market. It enables ASIC to detect market abuse such as suspected market misconduct, monitor market orderliness and integrity and to analyse the market structure, trends, and quality of Australian financial products. By marking Principal trades as Agency, CLSA distorted the data provided to ASIC which could hinder ASIC's surveillance of the market and impact ASIC's ability to carry out its surveillance function.

39. The MDP also noted that CLSA submitted incorrect Orders and Trade Reports over several months and involved a significant total value.
40. In relation to the second alleged contravention, CLSA highlighted that CLSA notified all clients pre-trade that it was dealing as principal and obtained the client's informed consent to this. This was because CLSA's facilitation desk is located in Hong Kong, and pre-trade consent for Principal trades is required to comply with the Hong Kong SFC's regulatory expectation. Therefore, the clients were informed CLSA was acting as Principal, although CLSA acknowledged this does not meet the requirements of the Rules. The MDP considered this was a mitigating factor in relation to the consequences of the contravention.
41. In relation to the third alleged contravention, while the number of breaches were low and the delay was 25 minutes, the MDP noted that the availability of information about opportunities to trade and recently executed transactions is central to market liquidity and price formation. The MDP were concerned that, given the significant size of the trade relative to the liquidity of the product, the delay of 25 minutes could be material and the failure to report it immediately could have an adverse impact on market integrity. The MDP considered this factor as aggravating.

Compliance culture

42. The MDP considered that the circumstances surrounding the alleged contraventions indicated CLSA had a good compliance culture.
43. While ASIC initially identified the irregularities, upon becoming aware of them, CLSA took immediate steps to investigate the breaches and put in place comprehensive remedial steps including rectifying the system error. The MDP noted CLSA's good compliance record as it has not been issued with any infringement notices by the MDP previously. The MDP considered this was a mitigating factor.

Remedial steps

44. Upon becoming aware of the problems, CLSA took the following remedial steps:
 - a. it reversed its technology change that caused the Cobra Tagging Issue on the weekend of 4 February 2023;
 - b. it implemented process improvements to prevent and detect mis-tagged Principal orders in the future; and
 - c. it conducted refresher training on client facilitation for both Hong Kong client facilitation traders and DTRs involved in the Relevant Crossings. The training outlined their obligations under Rule 6.3.1.

Penalty

First Alleged Contravention – Rule 7.4.2

45. The maximum penalty for a single contravention for a breach of Rule 7.4.2 of the Rules is 15,000 penalty units (the amount of one penalty unit for conduct from 1 July 2020 to 31 December 2022 is \$222 and for conduct from 1 January 2023 to 30 June 2023 is \$275).
46. The MDP considered that the conduct should be treated as a single course of conduct.
47. Having regard to the circumstances, the MDP decided to impose a penalty in the low range of 650 penalty units. The entire amount of the penalty was applied to the first contravention (where the penalty unit of \$222 applied), with no penalty being specified for each subsequent contravention.
48. This makes the total penalty for the first alleged contraventions **\$144,300**.

Second Alleged Contravention – Rule 3.4.1

49. Having regard to the circumstances of the second alleged contravention including the small number of incidents involved and the pre trade notification given to clients, the MDP considered a public censure to be an appropriate penalty.

Third Alleged Contravention – Rule 6.3.1(2)(a)

50. Having regard to the circumstances of the third alleged contravention including that it was an isolated event, the MDP considered a public censure to be an appropriate penalty.

Other information

The maximum pecuniary penalty payable under an infringement notice in relation to an alleged contravention of subsection 798H(1) of the Act, by reason of contravening Rules 7.4.2, 3.4.1 and 6.3.1(2)(a)(i) of the Rules is \$3,330,000 for each contravention occurring between 1 July 2020 and 31 December 2022 and \$4,125,000 for each contravention between 1 January 2023 and 30 June 2023.

Note: The maximum pecuniary penalty is 15,000 penalty units for a body corporate: see subsection 798K(2) of the Act. The amount of a penalty unit was \$222 between 1 July 2020 and 31 December 2022 and \$275 between 1 January 2022 and 30 June 2023: see subsection 4AA(1) of the Crimes Act 1914.

The maximum pecuniary penalty that a Court could order CLSA to pay for contravening subsection 798H(1) of the Act (a civil penalty provision), by reason of contravening Rules 7.4.2, 3.4.1 and 6.3.1(2)(a)(i) of the Rules, is determined by section 1317G of the Act.

Note: Under subsections 1317G(2) and (4), the maximum pecuniary penalty per contravention is the greatest of:

- (a) 50,000 penalty units; and
- (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
- (c) either:
 - (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
 - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

To comply with this infringement notice, CLSA must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to CLSA and ends 27 days after the day on which it is given. This penalty can be paid using the method detailed in the email by which this notice is given.

The effects of compliance with this infringement notice are:

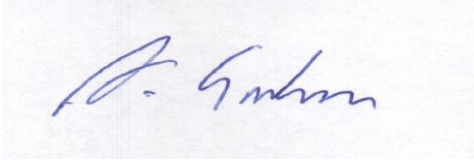
- (a) any liability of CLSA to the Commonwealth for the alleged contraventions of subsection 798H(1) of the Act is discharged; and
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against CLSA for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act; and
- (c) no administrative action may be taken by ASIC under sections 914A, 915B, 915C or 920A of the Act against CLSA 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; and
- (d) CLSA is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) CLSA is not taken to have contravened subsection 798H(1) of the Act.

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

CLSA may apply to ASIC for withdrawal of this infringement notice under regulation 7.2A.11 of the Regulations and for an extension of time to comply under regulation 7.2A.09 of the Regulations.

ASIC may publish details of this notice under regulation 7.2A.15 of the Regulations.

The unique code for this notice is MDP 0315/24.

A handwritten signature in blue ink, appearing to read 'A. Graham', is written over a light blue grid background.**Anthony Graham**

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities and 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.