



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

MDP01/17, Monday, 16<sup>th</sup> January 2017

Published by ASIC

# ASIC Gazette

## Contents

**Markets Disciplinary Panel:** Infringement Notice

**Recipient:** Pershing Securities Australia Pty 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*.

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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## PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

**To:** Pershing Securities Australia Pty Ltd ACN 136 184 962  
Level 2, 1 Bligh Street  
SYDNEY NSW 2000

**Matter:** MDP 836/16  
**Date given:** 29 November 2016

**TAKE NOTICE:** The Australian Securities and Investments Commission (“ASIC”) gives this infringement notice to Pershing Securities Australia Pty Ltd (“Pershing”) under regulation 7.2A.04 of the Corporations Regulations 2001 (“Regulations”).

To comply with this notice, Pershing must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$40,000**.

Unless a contrary intention appears, capitalised terms used in this notice have the same meaning as those defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 (“the Rules”) as in force at the time of the conduct.

### Details of the alleged contravention

1. Pershing was a participant in the Market operated by ASX at the relevant time and was required by subsection 798H(1) of the *Corporations Act 2001* (“the Act”) to comply with the Rules.
2. Rule 5.6.1(1) of the Rules relevantly provided:
  - A Trading Participant which uses its system for Automated Order Processing must at all times:
    - (a) have appropriate automated filters, in relation to Automated Order Processing; and
    - (b) ensure that such use does not interfere with:
      - (i) the efficiency and integrity of the Market ...
3. In April 2015, Pershing initiated a new connection to enable a client, a market maker who sought Direct Market Access (“DMA”), to trade via its Automated Order Processing (“AOP”) system.
4. In May 2015, Pershing requested the provider of the AOP system to map the new connection from the test environment into production, with instructions from Pershing that DMA orders were to be routed to a specific destination. This destination contained Pershing’s certified AOP market filters. The provider of the AOP system erroneously mapped the connection to a different, unused destination that did not contain the certified AOP market filters.

5. On 1 September 2015, the client commenced trading on the Market through the new connection of the AOP system. On 3 December 2015:
  - (a) at 10:42:28.458, the client's algorithm erroneously amended an Ask for 2,000 May 2022 Qantas Airlines Limited Exchange Traded Bond Units ("YTMQF3") from \$116.04 to \$0.15;
  - (b) at 10:42:28.698, the client's algorithm submitted a Bid for 2,000 YTMQF3 at \$115.84;
  - (c) the Bid at \$115.84 transacted against the Ask at \$0.15 resulting in a trade for 2,000 YTMQF3 at \$0.15 ("the Trade"); and
  - (d) the Trade was cancelled by Pershing at 10:44:24.999.
6. The Markets Disciplinary Panel (the "MDP") is satisfied that:
  - (a) Pershing was a Trading Participant of the Market;
  - (b) Pershing failed to ensure that appropriate automated filters in relation to its AOP system were in place between 1 September and 3 December 2015; and
  - (c) the Trade on 3 December 2015, which was 99.9% from the last traded price of \$115.49 on 25 November 2015 and resulted in no change in beneficial ownership, interfered with the efficiency and integrity of the Market.
7. Accordingly, the MDP has reasonable grounds to believe that Pershing had contravened Rule 5.6.1 and thereby contravened subsection 798H(1) of the Act.
8. In considering this matter and the appropriate penalty, the MDP commented:
  - (a) even though the erroneous mapping was caused by the actions of the provider of the AOP system, the operation of Rule 1.1.6(b) means Pershing was not absolved from its responsibility to ensure that the AOP system had the appropriate automated filters in operation at all times;
  - (b) although Pershing tested the operation of the filters in the test environment, Pershing was negligent in failing to test whether the connection had been mapped in accordance with Pershing's instructions in the production environment, choosing to rely only on a representation from the provider of the AOP system that the new connection had been correctly mapped;
  - (c) while the conduct gave rise to an isolated incident, which had a minimal market impact, appropriate automated filters had not been in place for a period of approximately 3 months during which the client had submitted 139,132 trading messages.
9. The MDP also noted that Pershing:

- (a) had appropriate controls in place to promptly identify and cancel the erroneous trade which limited its market impact;
- (b) promptly investigated the incident and identified the cause as the incorrect mapping of the client's DMA;
- (c) promptly had the mapping corrected and applied automated filters to all market destinations (including unused destinations) to prevent a similar incident re-occurring in the future; and
- (d) co-operated with ASIC's investigation of the matter.

### **Other information**

The maximum pecuniary penalty that a Court could order Pershing to pay for contravening subsection 798H(1) of the Act by reason of contravening Rule 5.6.1 is \$1,000,000. The maximum pecuniary penalty that may be payable by Pershing under an infringement notice in relation to the alleged contravention of Rule 5.6.1, is \$600,000.

### Compliance with the infringement notice

To comply with this infringement notice, Pershing must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to Pershing and ends 27 days after the day on which it is given. Payment is made by bank cheque to the order of "Australian Securities and Investments Commission".

The effects of compliance with this infringement notice are:

- (a) any liability of Pershing to the Commonwealth for the alleged contravention 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 Pershing 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; and
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against Pershing 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; and
- (d) Pershing is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Pershing is not taken to have contravened subsection 798H(1) of the Act.

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

Pershing may apply to ASIC for withdrawal of this 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.



**Grant Moodie**

Special Counsel to the Markets Disciplinary Panel  
with the authority of a Division of ASIC

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.