



ASIC

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Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: Bell Potter Securities 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*.

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: Bell Potter Securities Limited ACN 006 390 772
Level 29, 101 Collins Street
Melbourne VIC 3000

Matter: MDP 9014/17
Date given: 17 October 2017

TAKE NOTICE: The Australian Securities and Investments Commission (“ASIC”) gives this infringement notice to Bell Potter Securities Limited (“Bell Potter”) under regulation 7.2A.04 of the Corporations Regulations 2001 (“the Regulations”).

To comply with this notice Bell Potter must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$358,000**.

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 contraventions

1. Bell Potter was a Market Participant in the Market operated by ASX Limited at all relevant times and was required by subsection 798H(1) of the *Corporations Act 2001* (“the Act”) to comply with the Rules.

2. Rule 5.7.1 of the Rules relevantly provided:

A Market Participant must not make a Bid or Offer for, or deal in, any Products:

(a) as Principal:

(i) with the intention; or

(ii) if that Bid, Offer or dealing has the effect, or is likely to have the effect,

of creating a false or misleading appearance of active trading in any Product or with respect to the market for, or the price of, any Product ...

3. Rule 5.11.1 of the Rules relevantly provided:

(1) [If a Market Participant has reasonable grounds to suspect that:

...

(b) a transaction or an order transmitted to a Trading Platform has or is likely to have the effect of:

...

- (iv) creating, or causing the creation of, a false or misleading appearance with respect to the market for, or the price for trading in, financial products on the Market,

whether or not the Market Participant is aware of:

- (v) the intention of any party to the transaction or order; or
- (vi) all of the details of the transaction or order,

the Market Participant must, as soon as practicable, notify ASIC in writing of the details of the transaction or order (to the extent known to the Market Participant) and the reasons it suspects the matter set out in [paragraph (b)].

Capital raising

4. DirectMoney Limited ACN 004 661 205 (“DM”) was listed on ASX on 13 July 2015 by way of a back-door listing. The listing was preceded by a capital raising.
5. The Equity Capital Markets Division (the “ECM Division”) of Bell Potter managed the capital raising. The capital raising involved the issue of about 56 million shares, which raised about \$11 million. A client (“the Hong Kong Client”) of the Hong Kong Division (the “Hong Kong Desk”) of Bell Potter subscribed to the capital raising by investing \$1.1 million. The listing price of DM’s shares was 20c per share.

DM share price on the first day of listing

6. The MDP was satisfied that in relation to the trading of DM shares on 13 July 2015:
 - (a) it fell short of the expectations of the Hong Kong Client, who expressed those concerns to the Hong Kong Desk inviting them to consider takings steps to ensure the share price did not close below a certain price;
 - (b) the Hong Kong Desk relayed those concerns to the ECM Division, querying whether Bell Potter had any kind of facility to acquire shares in DM to make it close at a price that might have placated the concerns of the Hong Kong Client;
 - (c) the ECM Division indicated to the Hong Kong Desk, despite continued pressure from the Hong Kong Client, that it was their view that it was not the practice of Bell Potter to provide after-market support.

Bell Potter’s decision to purchase shares in DM

7. Sometime after the close of trading on 13 July 2015 but before the start of trading on 14 July 2015, Senior Management of Bell Potter decided to invest \$200,000 in DM.
8. Shares in DM were to be acquired on-market by Bell Potter as Principal and in a way so as to not acquire more than 20% of the total volume traded (the “20% daily volume limit”) in DM on any one given day.

9. A specified employee of Bell Potter, a Designated Trading Representative (the “DTR”), was to carry out the trading and was informed of the 20% daily volume limit.

Bids that exceeded the Ask prices for given volumes

10. The MDP is satisfied that, on a number of occasions throughout 14—23 July 2015, the DTR entered Bids for DM shares that exceeded the Ask prices for given volumes:
- (a) 14 July 2015: between 3.42pm—3.43pm, the DTR entered a Bid for 11,000 shares at 14c at a time when there were 10,858 shares on offer at 13.5c. This Bid resulted in a trade for 10,858 shares at 13.5c and a trade for the remaining 142 shares at the increased price of 14c;
 - (b) 16 July 2015: at 10.04am, the DTR entered a Bid for 61,000 shares at 15.5c at a time when there were 60,594 shares on offer at 15c. This Bid resulted in a trade for 10,594 shares at 15c, 50,000 shares at 15c and the remaining 406 shares at the increased price of 15.5c;
 - (c) 22 July 2015: at 3.49pm, the DTR entered a Bid for 5,000 shares at 15.5c at a time when there were 4,910 shares on offer at 15c. This Bid resulted in a trade for 4,910 shares at 15c and the remaining 90 shares at the increased price of 15.5c;
 - (d) 23 July 2015: at 4.00pm, the DTR entered a Bid for 20,000 shares at 15c at a time when there were 29,910 shares on offer at 14.5c. This Bid was amended within 9 seconds to 30,000 shares at 15c. At 4.06pm, the Bid was amended to 60,000 shares at 15.5c at a time when there was 59,820 shares on offer at 14.5c. The last amended Bid resulted in DM share price closing at 15c.

20% daily volume limit

11. The MDP is satisfied that, on most trading days between 14 – 23 July 2015, the DTR exceeded the 20% daily volume limit, notwithstanding the instructions from Senior Management.

Date	Percentage
14 July	21%
15 July	20%
16 July	26%
17 July	16%
20 July	100%
21 July	75%
22 July	27%
23 July	36%

Conversations between the DTR, Hong Kong Desk and ECM Division

12. The MDP is satisfied that, on a number of occasions throughout 14 – 23 July 2015, communications (email, telephone and Bloomberg chat) occurred between the DTR, the Hong Kong Desk and the ECM Division from which the MDP drew adverse inferences. Those communications indicated that:

- (a) the DTR was put in a position of conflict because the DTR was under an instruction from Senior Management to fill a buy order subject to a 20% daily volume limit but was being influenced by the ECM Division and the Hong Kong Desk to support the price of DM; and
- (b) the DTR succumbed to that influence, and engaged in trading that was intended to, and did, have the effect of supporting the price of DM, in order to placate the ECM Division and the Hong Kong Desk.

Compliance involvement

13. Between 14 – 23 July 2015, a number of alerts were generated by Bell Potter's post-trade surveillance system in relation to the trading in DM by the DTR, including alerts relating to a disproportionately large number of price increases compared to the volume bought, significant volume in the last 2 minutes of trading and that the trading may represent a pattern of trading activity warranting further enquiries.
14. Between 23 – 24 July 2015, a Compliance Manager of Bell Potter made file notes to the effect that Bell Potter as Principal had been acquiring shares in DM, potentially supporting the share price of DM and that the matter was suspicious as Bell Potter had been the underwriter to the capital raising, and escalated those concerns to the Head of Compliance who raised the matter with Senior Management.
15. On 27 July 2015, Senior Management sent an email to the Compliance Manager indicating that Senior Management had made a decision on 14 July 2015 to invest \$200,000 in DM on the basis that a purchase price of around 15c, a 25% discount on the capital raising price, represented compelling value; and the Compliance Manager made entries into the comments section of the post-trading alerts to reflect that email.
16. Between 24 – 27 July 2015, following communications between Senior Management, Compliance, ECM Division and the DTR, Senior Management instructed the DTR to no longer participate in the opening or closing auction in relation to DM shares and to otherwise acquire shares in DM by just following the Bids of other market participants.
17. On 18 May 2016, following ASIC's commencement of an investigation into the matter and the identification by Bell Potter of additional recorded telephone conversations of the Hong Kong Desk with the ECM Division and the DTR, Bell Potter gave ASIC a Suspicious Activity Report ("SAR") in relation to the matter.

Market manipulation

18. The MDP does not make any adverse finding that the decision of Senior Management of Bell Potter to invest \$200,000 in DM was lacking any genuine intention to invest as a value proposition. However, the MDP considers Bell Potter's decision to invest in DM to be unusual having regard to the prevailing circumstances, namely:
 - (a) as at July 2015, Bell Potter did not have a policy for trading as Principal because generally Bell Potter did not invest in listed companies for which it had managed or underwritten the capital raising;

- (b) the decision was made despite DM indicating in its supplementary prospectus dated 25 June 2015 that it withdrew the \$39 million valuation of the company as set out in the prospectus dated 26 May 2015 on the basis that there was no reasonable basis for that valuation;
 - (c) the decision to invest in DM appeared to be made quickly, with limited due diligence being undertaken; and
 - (d) the decision did not appear to specify an upper limit on the price at which DM shares were to be acquired.
19. The MDP is satisfied that, even accepting that the initial decision to invest in DM may have been a genuine commercial decision to invest as a value proposition, the manner of implementation of the decision by the DTR, acting under the instructions or influence of the ECM Division and the Hong Kong Desk, involved market manipulation. The acts and the intentions of the DTR can be attributed to Bell Potter: see Rules 1.1.6 and 1.1.7.
20. The MDP has reasonable grounds to believe that Bell Potter contravened Rule 5.7.1(a) by way of a course of conduct between 14 – 23 July 2015 on the basis that Bell Potter made Bids for shares in DM as Principal with the intention of creating a false or misleading appearance with respect to the price of DM shares, and which had that effect, or was likely to have that effect, because:
- (a) the DTR was aware, through the Hong Kong Desk, that the Hong Kong Client was dissatisfied with Bell Potter, particularly with the ECM Division, in relation to DM's share price performance;
 - (b) the DTR, under instructions or influence from the ECM Division and the Hong Kong Desk, entered a number of Bids for DM shares that exceeded the Ask prices for given volumes and which were indicative of price support; and
 - (c) the DTR, on most trading days, exceeded the 20% daily volume limit, which was indicative of the DTR preferring to further the interests of the ECM Division and the Hong Kong Desk, notwithstanding the instructions of Senior Management to keep within the 20% daily volume limit.
21. The MDP acknowledges that Rule 5.7.1(a) is not contravened merely because a Bid is submitted in a round number volume and which results in the execution of a trade that has the effect of increasing the last traded price of the shares.
22. The MDP also acknowledges that adherence to a daily volume limit requires skill and judgement on the part of the DTR. The MDP accepts that miscalculations can occur. The MDP also acknowledges that exceeding a daily volume limit cannot of itself amount to a contravention of Rule 5.7.1(a). However, in the circumstances of this matter, the MDP was not satisfied that the multiple failures to adhere to the daily volume limit were fully explicable on the basis of mere miscalculations.
23. The MDP also considers that, even if the 20% daily volume limit had been adhered to, that would not necessarily preclude an adverse finding in relation to Rule 5.7.1(a).

24. The penalty payable for the alleged contravention of Rule 5.7.1(a) is \$350,000, having regard to the following matters:
- (a) the conduct was intentional, and co-ordinated between the ECM Division and the Hong Kong Desk, and it was carried out by an experienced DTR who, despite being put in a position of conflict, was a willing participant; and
 - (b) the conduct was motivated by self-interest or the interests of related parties:
 - (i) the Hong Kong Desk were pressured by the Hong Kong Client, and the Hong Kong Desk were endeavouring to protect a number of other business relationships of value to the Bell Potter group; and
 - (ii) the ECM Division were pressured by the Hong Kong Desk, having regard to the fact that DM was the client of the ECM Division.

Suspicious Activity Reporting

25. The test in Rule 5.11.1 is, relevantly, whether Bell Potter, at the relevant time, had “reasonable grounds to suspect” that any of the Bids submitted by the DTR had the effect, or was likely to have the effect of, creating a false or misleading appearance with respect to the price of DM shares.
26. A suspicion that something exists involves more than mere idle wondering about whether it exists or not; it involves a positive feeling of actual apprehension. Reasonable grounds to suspect requires the existence of facts that are sufficient to induce that suspicion in a reasonable person.
27. The MDP has reasonable grounds to believe that Bell Potter contravened Rule 5.11.1(1)(b)(iv) of the Rules on or around 24 July 2015 for the following reasons:
- (a) the Compliance Manager and the Head of Compliance suspected that the Bids submitted by the DTR as set out in paragraph 10 had the effect, or were likely to have the effect, of supporting the price of DM shares because of the number and kinds of surveillance alerts that had been triggered, and because Bell Potter itself was acquiring the shares as Principal in circumstances where Bell Potter had managed the capital raising of DM;
 - (b) those suspicions were set out in file notes, the substance of which were promptly escalated to Senior Management, between 23 – 24 July 2015; and
 - (c) Senior Management, once made aware of the suspicions of Compliance, then expressly instructed the DTR to no longer participate in the opening or closing auction in relation to DM shares and to otherwise acquire shares in DM by just following the Bids of other market participants.
28. The MDP considers that the SAR given by Bell Potter to ASIC on 18 May 2016 could not be described as having been given as soon as practicable after having such reasonable suspicions. The reasonable suspicions were formed earlier in July 2015. The

identification of the additional recordings of telephone conversations of the Hong Kong Desk merely had a tendency to confirm the reasonable suspicions formed earlier.

29. The penalty payable for the alleged contravention of Rule 5.11.1(1)(b)(iv) is \$8,000. The decision of Bell Potter not to notify ASIC of the suspicious activity as soon as practicable after 23 July 2015 demonstrated a reluctance to promptly engage with ASIC in relation to reasonably suspected risks to market integrity arising from its conduct.

Other information

The maximum pecuniary penalty that a Court could order Bell Potter to pay for contravening subsection 798H(1) of the Act is:

- by reason of contravening Rule 5.7.1—\$1,000,000; and
- by reason of contravening Rule 5.11.1—\$20,000.

The maximum pecuniary penalty that may be payable by Bell Potter under an infringement notice in relation to the alleged contravention of subsection 798H(1) of the Act is:

- by reason of contravening Rule 5.7.1—\$600,000; and
- by reason of contravening Rule 5.11.1—\$12,000.

Compliance with the infringement notice

To comply with this infringement notice, Bell Potter must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to Bell Potter 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 Bell Potter 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 Bell Potter 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 Bell Potter 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) Bell Potter is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Bell Potter is not taken to have contravened subsection 798H(1) of the Act.

Bell Potter may choose not to comply with this infringement notice, but if Bell Potter does not comply, civil proceedings may be brought against it in relation to the

alleged contraventions. Bell Potter 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 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.