



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

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# ASIC Gazette

## Contents

**Markets Disciplinary Panel:** Infringement Notice

**Recipient:** Interactive Brokers LLC

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:** Interactive Brokers LLC ARBN 091 191 141  
Level 40, 225 George Street  
Sydney NSW 2000

**Matter:** MDP 347/16  
**Date given:** 14 November 2017

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

To comply with this notice Interactive must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$250,000**.

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 (Chi-X Australia Market) 2011 (“the Rules”) as in force at the time of the conduct.

### Details of the alleged contraventions

1. Interactive was a Market Participant in the Chi-X Market 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 5.5.2(b) of the Rules relevantly provided:

A Market Participant must have and maintain the necessary organisational and technical resources to ensure that ... the Market Participant complies at all times with these Rules ...

3. Rule 5.7.1(b)(iii) of the Rules relevantly provided:

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

(b) on account of another person where: ...

(iii) taking into account the circumstances of the Order, a Market Participant ought reasonably suspect that the person has placed the Order with the intention of creating,

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

4. Rule 5.7.2 of the Rules sets out certain matters that a Market Participant must have regard to in considering the circumstances of the Order. The circumstances include the recent trading in the Equity Market Product, material variations in the price of the Product, the time of entry of the Order and whether the person on whose behalf the order is placed may have an interest in creating a false or misleading appearance with respect to the market for, or the price of, the Equity Market Product.
5. Interactive operated an Automated Order Processing (“AOP”) system that allowed clients to enter Orders into the Chi-X Market and the ASX Market. Depending on best execution, the Orders would be submitted either to the Chi-X Market or routed to a related body corporate of Interactive for entry into the ASX Market.
6. A client of Interactive placed a series of Bids for shares in Altona Mining Limited (“AOH”) throughout November and December 2013 using the AOP system.

The initial period (5<sup>th</sup> – 29<sup>th</sup> November 2013)

7. The MDP was satisfied that, during the initial period, the client placed 39 Bids through the AOP system—17 Bids were submitted to the Chi-X Market and 26 Bids were routed to the ASX Market, with 4 of those Bids being split between those two markets.
8. The Bids reflected a particular pattern of trading, namely:
  - (a) the Bids that resulted in trades:
    - (i) represented 6.57% of all trades in AOH on both markets but caused 73% of all price increases from the last traded prices of AOH; and
    - (ii) only consumed between 0.03% and 24% of AOH that was the subject of Offers at the respective Bid prices;
  - (b) 22 Bids were for very small volumes of AOH which traded in a way that caused price increases from the last traded price, namely:
    - (i) 6 Bids were for parcels of 100 shares at prices between 15c and 15.5c (representing trade value between \$15 and \$15.50); and
    - (ii) 16 Bids were for parcels of 1,000 shares at prices between 14.5c and 15c (representing trade value between \$145 and \$150);
  - (c) 31 Bids resulted in trades causing price increases of 0.25c and 0.5c, including to the highest price, or equal to the highest price, at which AOH traded on the particular Trading Day;
  - (d) 13 Bids were placed within 15 minutes of decreases in the price of AOH shares;

- (e) 7 Bids entered during the session before the Closing Single Price Auction<sup>1</sup>, created a price increase or prevented a price decrease, and set the closing price for AOH shares on the particular Trading Days.

The relevant period (3<sup>rd</sup> – 9<sup>th</sup> December 2013)

9. The MDP was satisfied that the pattern of trading of the client in relation to Bids for AOH during by initial period continued throughout the relevant period. During the relevant period, the client placed 22 Bids through the AOP system—9 Bids were submitted to the Chi-X Market and 13 Bids were routed to the ASX Market.
10. The Bids reflected the same or similar pattern of trading, namely the 22 Bids caused 19 price increases from the last traded price, and created 16 price increases with Bids valued at less than \$150.

Client's significant holding in AOH

11. The MDP was satisfied that the client indirectly held a significant parcel of AOH shares. Immediately before the start of the initial period, the trading account operated by the client held 6,980,734 shares in AOH which, based on a share price of 15c, represented an investment in AOH of \$1.04 million. By the end of the initial period, the trading account operated by the client held 7,293,840 shares in AOH which, based on a share price of 15c, represented an investment of \$1.19 million.

**Suspected market manipulation**

12. Rule 5.7.1(b)(iii) imposes a prohibition on enabling Orders that may amount to suspected market manipulation by clients. Trading activity which does not reflect genuine supply and demand has a detrimental effect on the integrity of financial markets, and may damage public confidence in the markets.
13. The MDP has reasonable grounds to believe that Interactive contravened Rule 5.7.1(b)(iii) on the basis that a Market Participant in Interactive's position during the relevant period ought reasonably to have suspected that the Bids submitted through Interactive's AOP system to Chi-X by the client by way of a course of conduct were placed by the client with the intention of creating a false or misleading appearance with respect to the market for, or the price of, AOH shares.
14. 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. The MDP considered that, by no later than the start of the relevant period (and possibly earlier during the initial period), a Market Participant in Interactive's position would have had reasonable grounds to suspect that the client was placing these Bids to support the share price of AOH.

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<sup>1</sup> "Closing Single Price Auction" (or CSPA) has the meaning given by Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 as in force at the time of the conduct.

15. The MDP was satisfied that during the initial period, and continuing through the relevant period, a number of Bids placed by the client seemed consistent with an intention to support the share price of AOH because those Bids appear to have been timed to create a price impact at minimal cost. These Bids seemed inconsistent with the actions of a genuine purchaser seeking to acquire AOH shares at the best possible price because the resulting trades consumed a very small proportion of the AOH shares on offer at the Bid prices. The client had an interest in supporting the share price of AOH, given the client's significant indirect holding in AOH.
16. The MDP accepts that some of the Bids placed by the client during both initial period and the relevant period appeared to be genuine Bids to acquire AOH shares. Generally, these Bids were for larger volumes (eg 20,000, 50,000 and 100,000) which resulted in trades that did not impact on the price of AOH shares.
17. The penalty payable for the alleged contravention of Rule 5.7.1(b)(iii) is \$170,000.

### **Organisational and technical resources**

18. The MDP does not construe Rule 5.5.2(b) as imposing a standard of zero failure. For example, the MDP does not consider that an adverse finding in relation to Rule 5.7.1(b)(iii) will inevitably result in an adverse finding in relation to Rule 5.5.2(b).
19. The MDP nonetheless has reasonable grounds to believe that Interactive contravened Rule 5.5.2(b) during both the initial period and the relevant period on the basis that Interactive did not have sufficient organisational and technical resources to promptly detect, report and mitigate the risks of manipulative trading by clients.
20. The MDP accepts that Interactive had some systems, procedures and resources in place that were intended to prevent or minimise manipulative trading. These comprised:
  - (a) pre-trade filters, which checked Orders against price, quantity and trade value parameters before being submitted to the Trading Platform (eg the Customer Anomaly Detection System (CADS) accessed historical trading for each client to detect unusual or manipulative trading);
  - (b) post-trade reports and alerts, including Cross-Trade Surveillance Reports, Marking the Close Reports and Daily Statistics Reports; and
  - (c) written supervisory procedures to be followed by trading desk staff, including policies and procedures for monitoring clients' use of Interactive's AOP system and for reporting of suspicious trading by clients.
21. However, the MDP considers that Interactive's compliance framework lacked sophistication, and its management lacked the required level of focus to ensure compliance with the Rules. Interactive's systems, procedures and resources, when benchmarked against those of its peers, were inadequate because:
  - (a) the pre-trade filters failed to detect a series of Bids of very low value;

- (b) the post-trade alerts failed to identify the client's trading that indicated a pattern of 'marking the close', creating disproportionate price increases to the volume purchased, and purchasing uneconomic quantities of AOH having regard to the brokerage charge per trade. Instead:
    - (i) one post-trade alert was generated in the initial period, which merely identified that the client had purchased a volume of AOH which was significant in relation to a rolling average of AOH purchases; and
    - (ii) another post-trade alert was generated in the relevant period, which merely identified that the client had purchased a significant volume of AOH;
  - (c) aspects of the written procedures were 'boilerplate' documents, merely restating the law, and did not provide sufficient guidance to trade desk staff on how to analyse a client's trading patterns against potential manipulative trading;
  - (d) the written procedures also had not been sufficiently adapted by Interactive for use in relation to trading on Australian financial markets, e.g. some procedures referred to overseas jurisdictions and did not refer to Australian markets.
22. Interactive was unaware of the suspicious trading by the client. ASIC detected the suspicious trading and brought it to the attention of Interactive.
23. In circumstances where alerts of suspicious trading are triggered arising from the trading activities of a client, the MDP expects a Market Participant to make prompt inquiries about the client in order to understand the trading activities and, if warranted, to take action to prevent threats to the integrity of the market.
24. The MDP rejects any suggestion that, because the market will correct itself, this is justification for not having systems to detect low value Bids creating price increases.
25. The penalty payable for the alleged contravention of Rule 5.5.2(b) is \$80,000.
26. The MDP noted that Interactive has undertaken significant steps to prevent recurrence of the conduct, namely:
- (a) restructuring its Australian business into a dedicated Australian subsidiary to service Australian market activity;
  - (b) implementing enhanced post-trade surveillance procedures in connection with the restructure of its Australian business, after consultation with ASIC;
  - (c) providing further training and guidance to its senior trade desk staff with a specific emphasis on detection and escalation of suspicious trading patterns; and
  - (d) increasing its Asia-Pacific compliance resources and providing greater levels of oversight and monitoring of its clients' trading activities in Australia.
27. Other mitigating factors the MDP took into account included that the alleged contraventions of the Rules were not contested by Interactive; that it did not

gain any material benefit arising from its conduct as the brokerage amounts for the low value trades were nominal; and that no adverse findings have previously been made by the MDP against Interactive.

### **Other information**

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

- by reason of contravening Rule 5.5.2—\$1,000,000; and
- by reason of contravening Rule 5.7.1—\$1,000,000.

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

- by reason of contravening Rule 5.5.2—\$600,000; and
- by reason of contravening Rule 5.7.1—\$600,000.

### Compliance with the infringement notice

To comply with this infringement notice, Interactive must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to Interactive 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”.

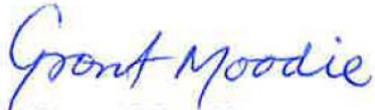
The effects of compliance with this infringement notice are:

- (a) any liability of Interactive 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 Interactive 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 Interactive 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) Interactive is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) Interactive is not taken to have contravened subsection 798H(1) of the Act.

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

Interactive 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.