



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette
MDP01/18, Tuesday, 12th June 2018

Published by ASIC

ASIC Gazette

Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: Wilsons Advisory and Stockbroking 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*.

ISSN 1445-6060 (Online version)
ISSN 1445-6079 (CD-ROM version)

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: Wilsons Advisory and Stockbroking Ltd (ACN 010 529 665)
Waterfront Place
Level 30, 1 Eagle Street
Brisbane QLD 4000

Matter: MDP 209/18

Date given: 1 May 2018

TAKE NOTICE: The Australian Securities and Investments Commission (“ASIC”) gives this infringement notice to Wilsons Advisory and Stockbroking Ltd (“Wilsions”) under regulation 7.2A.04 of the Corporations Regulations 2001 (“the Regulations”).

To comply with this notice Wilsons must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$35,000**.

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 (Competition in Exchange Markets) 2011 (“the Rules”) as in force at the time of the conduct.

Details of the alleged contravention

1. Wilsons was a Participant in the market operated by ASX Limited at all relevant times and was required by section 798H(1) of the *Corporations Act 2001* (“the Act”) to comply with the Rules.
2. Rule 5A.2.1 relevantly provided:
 - (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.
3. Rule 5A.2.3(1) defines “Regulatory Data” and it includes for each side (buy and/or sell) of the Order or Transaction on which the Participant acts as agent for a client, a unique notation, code or number used by the Participant to identify the person on whose instruction the Order is submitted or the Transaction was executed.

4. The MDP has reasonable grounds to believe that Wilsons contravened Rules 5A.2.1(1) and 5A.2.1(2) and thereby contravened subsection 798H(1) of the Act between 3 February 2016 and 10 February 2017 in respect of the following conduct:
5. On 15 November 2016:
 - (a) Client 1, for whom Wilsons had a unique account number, gave Wilsons instructions to buy 40,000 TCL at market;
 - (b) Wilsons submitted a total of 49 Orders to purchase TCL in quantities ranging from 800 to 1400 shares and with a net total of 40,000 shares;
 - (c) for each Order to buy, Wilsons provided the generic code RET1 for the Origin of Order rather than Client 1's unique account number.
6. On 3 February 2016:
 - (a) Client 2, for whom Wilsons had a unique account number, instructed Wilsons to sell 380,000 BAL at a nominated price;
 - (b) Client 3, for whom Wilsons had a unique account number, gave Wilsons six instructions to buy a total of 380,000 BAL;
 - (c) Wilsons reported a Transaction in a Trade Report made to ASX for 380,000 BAL and in that Trade Report, correctly provided a unique code for the buyer (Client 3) Origin of Transaction but incorrectly provided the generic code RET1 for the seller Origin of Transaction rather than Client 2's unique account number.
7. On a further 6 occasions in May and August 2016 Wilsons reported transactions in CL1 in Trade Reports to the ASX using the generic notations RET1, RET2 or RET3 for the seller Origin of Transaction rather than each client's known unique account number.
8. The MDP has reasonable grounds to believe that Wilsons contravened subsection 798H(1) of the Act by reason of contravening:
 - (a) Rule 5A.2.1(1) by transmitting 49 Orders to the Order Book of the ASX that did not show the correct Origin of Orders Order; and
 - (b) Rule 5A.2.1(2) by making seven (7) Trade Reports to the ASX that did not show the correct Origin of Transaction.
9. The penalties payable in relation to the alleged contraventions are as follows:
 - (a) in relation to the alleged contraventions of subsection 798H(1) of the Act by reason of contravening Rule 5A.2.1(1) - the penalty payable is \$20,000 for one of those contraventions, and the penalty payable for the remainder is nil; and
 - (b) in relation to the alleged contraventions of subsection 798H(1) of the Act by

reason of contravening Rule 5A.2.1(2) - the penalty payable is \$15,000 for one of those contraventions, and the penalty payable for the remainder is nil.

10. The apportionment of the \$35,000 penalty for the two alleged contraventions of Rule 5A.2.1 into \$20,000 (in relation to Orders) and \$15,000 (in relation to Trade Reports) was an apportionment determined after taking into account that a similar course of conduct resulted in the provision of incorrect Regulatory Data.
11. The penalty payable for the provision of incorrect Regulatory Data about Orders (\$20,000) was higher than the penalty payable for incorrect Regulatory Data in Trade Reports (\$15,000) because the MDP considers that information about Orders reveal more about market conduct and misconduct to a regulator than information in Trade Reports.
12. In considering this matter and the appropriate penalty, the MDP commented that:
 - (a) there was no evidence of a deliberate attempt by Wilsons to conceal information about the Origin Orders and Transactions from ASIC;
 - (b) the reporting of Regulatory Data by Participants is important to ASIC's market supervisory function; however, it is not suggested that Wilsons' conduct had an impact on the integrity of the financial markets;
 - (c) the MDP rejected Wilsons' position that it had taken reasonable steps to enhance its technology and systems to enable the regulatory data to be provided, but that the relevant circumstances of the Orders and Trade Reports were unique, such that it was not reasonable to expect it to provide the unique notations, as contemplated by ASIC in the guidance provided in Regulatory Guide 223;
 - (d) Wilsons was contacted by ASIC on a number of occasions after the introduction of the new regulatory reporting obligations with concerns or queries about a number of different aspects of Wilsons' compliance with these obligations, to which Wilsons provided specific responses. However, the MDP was of the view that Wilsons displayed a piecemeal approach to compliance with Chapter 5A of the Rules by responding to each individual issue raised by ASIC, rather than being alert to the possibility of broader but related compliance issues and resolving these;
 - (e) As ASIC acknowledges in its Regulatory Guide 223, there are situations where, having taken reasonable steps to comply, a Participant may still be unable to provide a unique notation (such as block trades involving multiple parties). However, it is incumbent on a Participant to ensure that it explores all options reasonably open to it to ensure that its systems and processes are adequate to capture and report the required data to the Market Operator, and this is an ongoing obligation which may require the Participant to enhance their existing systems and processes.
13. Wilsons did not derive any benefit from the conduct, and also cooperated with ASIC throughout its investigation.

14. Wilsons has not been previously sanctioned by the MDP for alleged contraventions of the market integrity rules.
15. The penalties payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act are as follows:
 - (a) by reason of contravening Rule 5A.2.1 (Orders)—\$20,000;
 - (b) by reason of contravening Rule 5A.2.1 (Trade Reports)—\$15,000.

Other information

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

- by reason of contravening Rule 5A.2.1 —\$1,000,000;

The maximum pecuniary penalty payable under an infringement notice in relation to an alleged contravention by Wilsons of section 798H(1) of the Act is:

- by reason of contravening Rule 5A.2.1 —\$600,000;

To comply with this infringement notice, Wilsons must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to Wilsons 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 Wilsons to the Commonwealth for the alleged contravention of section 798H(1) of the Act is discharged; and
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against Wilsons for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of section 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 Wilsons for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of section 798H(1) of the Act; and
- (d) Wilsons is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) Wilsons is not taken to have contravened section 798H(1) of the Act.

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

Wilsions 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.



David Dworjanyn

Senior Manager, Chief Legal Office

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.