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Australian Securities &
Investments Commission

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Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: Macquarie Securities (Australia) 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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ASIC
Australian Securities &
Investments Commission



PART 7.2A OF THE CORPORATIONS REGULATIONS 2001

INFRINGEMENT NOTICE

To: Macquarie Securities (Australia) Limited ACN 002 832 126

Matter: MDP 118/19

Date given: 3 May 2019

TAKE NOTICE: The Australian Securities and Investments Commission (“ASIC”) gives this infringement notice to Macquarie Securities (Australia) Limited (“Macquarie”) under regulation 7.2A.04 of the Corporations Regulations 2001 (“the Regulations”), which is made for the purposes of section 798K of the *Corporations Act 2001* (“the Act”).

To comply with this notice Macquarie must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$300,000**.

Background

1. This matter concerns alleged contraventions of the market integrity rules that deal with the provision of Regulatory Data, in relation to Orders and Trade Reports, to Market Operators over a 4-year period between 28 July 2014 and 31 July 2018.
2. The rules are:
 - (a) Rule 5A.2.1 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (the “Competition Rules”), which were in force from 28 July 2014 until 6 May 2018; and
 - (b) Rule 7.4.2. of the ASIC Market Integrity Rules (Securities Markets) 2017 (the “Securities Rules”), which have been in force since 7 May 2018.
3. Rule 7.4.2 of the Securities Rules superseded Rule 5A.2.1 of the Competition Rules. The respective rules are effectively identical in their terms. For the purposes of this infringement notice, these rules are referred to as the “Regulatory Data Rules”.
4. The Regulatory Data Rules respectively apply in relation to each Order transmitted to an Order Book and each Trade Report submitted to a Market Operator, namely:
 - (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.

5. “Regulatory Data” relevantly includes information about the following categories:
 - (a) “Capacity”: a notation to identify whether the Participant, in relation to the Order or Transaction, is acting as Principal, as agent for a client or as both Principal and agent for a client;
 - (b) “Origin”: where the Participant acts as agent for a client—a unique notation, code or number used by the Participant to identify the person on whose instructions the Order is submitted or Transaction executed;
 - (c) “Intermediary”: where the Participant acts as agent for an Automated Order Processing (AOP) Client that is a financial services licensee and has an arrangement with the license under which the licensee submits Trading Messages into the Participant’s system as intermediary for its own clients—the AFSL number of the licensee.
6. The Regulatory Data Rules are concerned with enhanced market supervision by requiring Market Participants to provide data about Orders and Trade Reports to Market Operators. The ultimate benefit and importance of Regulatory Data is to ensure an orderly market and to enhance transparency.
7. The provision of Regulatory Data to Market Operators also ensures that ASIC can obtain sufficient and appropriate market data in a timely manner to enable it to monitor and detect market misconduct considering rapidly developing technology and increasingly complex trading strategies.
8. The provision of incorrect or missing Regulatory Data to Market Operators impedes informed regulatory decision-making by Market Operators and by ASIC.

Details of the alleged contraventions

9. The MDP found that, between 28 July 2014 and 31 July 2018, Macquarie:
 - (a) transmitted a total of 42,027,429 Orders to the Order Books of ASX and Chi-X (comprising 41,073,611 Orders to ASX and 953,818 Orders to Chi-X) that included incorrect information, or omitted required information, about one or more of the Capacity, Origin and Intermediary categories;
 - (b) submitted a total of 377,175 Trade Reports to ASX and Chi-X (comprising 30,540 Trade Reports to ASX and 346,635 Trade Report to Chi-X) that included incorrect information, or omitted required information, about one or more of the Capacity, Origin and Intermediary categories.
10. The deficient Orders and Trade Reports represented approximately 12% and 21% of the total number of Orders and Trade Reports submitted by Macquarie over the period.
11. Macquarie did not contest that these Orders and Trade Reports contained incorrect

information, or omitted required information, about one or more of the Capacity, Origin and Intermediary categories. The matter was self-reported to ASIC by Macquarie.

12. The MDP has reasonable grounds to believe that Macquarie contravened subsection 798H(1) of the Act on 42,404,604 occasions by reason of contravening the Regulatory Data Rules on:
 - (a) 42,027,429 occasions in relation to Orders; and
 - (b) 377,175 occasions in relation to Trade Reports.

Penalty

13. 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 the Regulatory Data Rules in relation to Orders—the penalty payable is \$180,000 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 the Regulatory Data Rules in relation to Trade Reports—the penalty payable is \$120,000 for one of those contraventions, and the penalty payable for the remainder is nil.
14. The apportionment of the \$300,000 penalty for the two alleged contraventions of the Regulatory Data Rules into \$180,000 (in relation to Orders) and \$120,000 (in relation to Trade Reports) was an apportionment determined after taking into account that the same course of conduct resulted in the provision of missing or incorrect Regulatory Data.
15. The penalty (\$180,000) for the missing or incorrect Regulatory Data about Orders was higher than the penalty (\$120,000) for the missing or incorrect Regulatory Data about Trade Reports because the MDP considers that information about Orders is more useful to a regulator than disclosures about Trade Reports because Orders reveal more about market conduct and misconduct than Trade Reports.
16. There are several aggravating factors in this matter. The key factors are:
 - (a) Macquarie's poor design and implementation of updates to key systems;
 - (b) the high number of Orders and Trade Reports containing incorrect or missing data;
 - (c) the multiple categories of incorrect or missing data;
 - (d) the length of time the problem persisted without detection;
 - (e) a history of compliance issues in relation to Automated Order Processing (AOP).
17. The causes of the incorrect or missing information were:

- (a) operational errors in configuring systems to integrate with each other in the lead up to the commencement of the Regulatory Data Rules in July 2014—including account designations being updated in the client account database but not flowing through to other systems which provided the Regulatory Data;
 - (b) weaknesses in the process for on-boarding new clients—including in the requirements for information to be communicated between teams; errors made when designating capacity details based on lack of understanding about the definitions of principal and agency and the intended use of the account being set up; and human error when adding or changing accounts, fields and systems which provided the Regulatory Data;
 - (c) weaknesses in the control frameworks—including manual entry required by a number of different personnel; coding issues where changes to a system were made; systems not made to reconcile against each other where there were inconsistencies for the same client; default settings being applied in some circumstances; and systems not prompting for Regulatory Data fields to be completed or allowing trading messages to be sent with blank fields.
18. The deficiencies were not detected by Macquarie's systems, despite Macquarie performing either AOP Material Change Reviews or AOP Annual Reviews, as required by the market integrity rules, over the relevant 4-year period.
19. The deficiencies came to Macquarie's attention because, following a query by a client which was unrelated to Regulatory Data, a Macquarie trader noticed a discrepancy in relation to "Capacity" while dealing with the query, and subsequently elevated the issue. But for this event, the MDP has limited confidence that Macquarie would have detected the issues through its reviews and the systems that were in place at the relevant time.
20. The key mitigating factors are Macquarie's commitment to understand the causes of the problems and to fix them and their self-report to, and cooperation with, ASIC throughout its investigation.
21. The MDP has previously considered two matters involving the Regulatory Data Rules:
 - (a) **MDP 806/16 - May 2017 (UBS Securities)**: The MDP specified a penalty of \$50,000 comprised of \$30,000 (in relation to Orders) and \$20,000 (in relation to Trade Reports). The matter concerned the transmission of 78,833 Orders and 924 Trade Reports over a 10-month period. The Orders and Trade Reports contained incorrect information about "Capacity". The errors were caused by system deficiencies.
 - (b) **MDP 209/18 – May 2018 (Wilsons Advisory and Stockbroking)**: The MDP specified a penalty of \$35,000 comprised of \$20,000 (in relation to Orders) and \$15,000 (in relation to Trade Reports). The matter concerned the transmission of 49 Orders and 7 Trade Reports over 2 separate days where the Orders and Trade Reports contained incorrect information about "Origin". The MDP found that Wilsons' had unreasonably used generic notations rather than unique notations to identify the persons who gave the instructions to submit the Orders.

22. The MDP considers the Wilsons matter to be of limited guidance in this matter because of the relatively small number of incorrect Orders and Trade Reports, the isolated nature of the incidents and the explanation for the cause of the conduct.
23. The MDP considers the UBS matter to be more analogous because of the larger number of Orders and Trade Reports, the duration of the conduct and the causes of the errors. The present matter is considered more serious than the UBS matter because:
 - (a) the number of Orders and Trade Reports with missing or incorrect information was significantly higher—500 times higher (in relation to Orders) and 400 times higher (in relation to Trade reports);
 - (b) the missing or incorrect information was not limited to a single category of information (“Capacity”) but included one or more categories of information (“Capacity”, “Origin” and “Intermediary”);
 - (c) the duration of the conduct was significantly longer—4 years, in contrast to the UBS matter which involved conduct over a 10-month duration.
24. The MDP considers that Macquarie was negligent in its design, testing, implementation and review of its systems in relation to compliance with the Regulatory Data Rules.
25. Macquarie has been previously sanctioned by the MDP as follows:
 - (a) **MDP 22404/15 - October 2015 (penalty \$110,000)**: some employees, not being designated trading representatives, were permitted to submit orders into ASX’s trading platform. The MDP characterised Macquarie’s conduct as careless;
 - (b) **MDP 4693/15 - May 2016 (penalty \$120,000)**: inappropriate Automated Order Processing (AOP) filters had enabled orders to be submitted to Chi-X’s trading platform at a price well away from the prevailing market price. The MDP characterised Macquarie’s conduct as negligent;
 - (c) **MDP 805/16 - April 2017 (penalty \$505,000)**: allowing a client to use Macquarie’s AOP system to submit orders to Chi-X in circumstances where a market participant ought reasonably suspect that the client submitted the orders with the intention of manipulating the market. The MDP characterised the conduct as reckless.
26. The MDP accepts that Macquarie intended to comply with those Rules. Macquarie cooperated with ASIC throughout its review and investigation of the matter.
27. The MDP notes that, once Macquarie became aware of the potential scale of the problem, it undertook a comprehensive review to identify the cause of the problems. Macquarie has implemented remedial measures to its systems and processes to prevent future reoccurrences of the missing or incorrect Regulatory Data. This demonstrates that Macquarie is committed to compliance with the Regulatory Data Rules.
28. Given their scale, market share and high market flows, the MDP considers that market participants, such as Macquarie, have greater potential and capacity to undermine

market integrity. A market participant with such greater potential and capacity should carry a greater responsibility to properly manage the risks that flow from their conduct. If that risk is poorly managed, as was the case here, the financial consequences to the market participant should be commensurately greater.

29. As the ultimate benefit and importance of Regulatory Data is to ensure an orderly market and to enhance transparency, the penalty must reflect the importance of ensuring these objectives are fulfilled by all market participants.

Other information

The maximum pecuniary penalty that a Court could order Macquarie to pay for contravening subsection 798H(1) of the Act is, by reason of contravening a Regulatory Data Rule, is \$1 million.

The maximum pecuniary penalty payable under an infringement notice in relation to an alleged contravention of subsection 798H(1) of the Act is, by reason of contravening a Regulatory Data Rule, is \$600,000.

To comply with this infringement notice, Macquarie must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to Macquarie 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 Macquarie 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 Macquarie 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 section 914A, 915B, 915C or 920A of the Act against Macquarie 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) Macquarie is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) Macquarie is not taken to have contravened subsection 798H(1) of the Act.

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

Macquarie 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.



Grant Moodie

Counsel to the MDP

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.