



ASIC
Australian Securities &
Investments Commission



PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: ABN AMRO Clearing Sydney Pty Ltd ACN 081 279 889
Level 11, 580 George Street
Sydney NSW 2000

Matter: MDP 0420/22

Date given: 29 July 2022

TAKE NOTICE: The Australian Securities and Investments Commission (*ASIC*) gives this infringement notice to ABN AMRO Clearing Sydney Pty Ltd ACN 081 279 889 (*ABN AMRO*) 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 ABN AMRO must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$222,000**. This penalty amount represents 1,000 penalty units, where the amount of a penalty unit is \$222.

Unless a contrary intention appears, capitalised terms used in this notice have the same meaning as in Rules 1.4.3 and 3.4.2 of the *ASIC Market Integrity Rules (Futures Markets) 2017* (the *Rules*) as in force at the time of the conduct.

Background

1. ABN AMRO was a Market Participant in the ASX 24 Market operated by ASX 24 at the relevant times and was required by subsection 798H(1) of the Act to comply with the Rules. At the relevant times, ABN AMRO's principal place of business was Level 11, 580 George Street, Sydney NSW 2000.
2. Part 3.4 of the Rules deals with trading principles for block trades. In particular, rule 3.4.2(1) provides as follows:

3.4.2 Prohibitions

(1) Market Participants must not aggregate separate Orders in order to meet Minimum Volume Thresholds.

3. At all relevant times Rule 1.4.3 contained the following definition: '*Minimum Volume Threshold* means the threshold determined by a Market operator under its operating rules, being the minimum number of lots in respect of each Contract.'
4. At all relevant times the ASX24 Operating Rules Procedure 4820 specified a Minimum

Volume Threshold of 200 lots for SPI 200 Futures Contracts and Trading Procedure 12 provided:

- 12 As per ASIC Market Integrity Rules, Trading Participants cannot aggregate smaller orders to make up a Block Trade Order, thereby satisfying the Minimum Volume Threshold. Block Trade Orders may only be aggregated where each individual order meets or exceeds the Minimum Volume Threshold.
5. The Markets Disciplinary Panel (**MDP**) has reasonable grounds to believe that ABN AMRO contravened Rule 3.4.2(1) and therefore contravened subsection 798H(1) of the Act on three occasions, being 7 January 2021, 14 April 2021 and 15 April 2021 (each a **relevant day**), in respect of the following conduct.

Alleged contraventions

6. On the evidence before it, the MDP is satisfied as to the matters set out in paragraphs 7 to 12.
7. On the relevant days, ABN AMRO registered the following block trades (**relevant block trades**), each of which included split allocations below the Minimum Volume Threshold of 200 lots:
 - (a) 200 APH1 @ 6,648.80 on 7 January 2021 (this included two sell side split allocations of 100 lots);
 - (b) 588 APM1 @ 6,996.10 on 14 April 2021 (this included a sell side split allocation of 37 lots); and
 - (c) 234 APM1 @ 7,030.60 on 15 April 2021 (this included buy side split allocations of 100 lots and 134 lots).
8. ABN AMRO's direct client on each of the relevant days was a related entity of ABN AMRO (**ABN AMRO RE**), which held an omnibus account for its underlying clients. On each relevant day, an underlying client (**Underlying Client**) of ABN AMRO RE had direct market access to the ASX 24 Market. During that time, the Underlying Client had not yet undertaken training on the requirements of the ASX 24 Market.
9. On the relevant days, ABN AMRO received email instructions from the Underlying Client to register the relevant block trades, with a request to allocate the respective buy and sell trades to the underlying broker clients in accordance with the allocations specified in the spreadsheet attached to each of the emails.
10. Although two employees from ABN AMRO's Operations team performed a check for the Minimum Volume Threshold of the total aggregate of each of the relevant block trades before being registered, that check was not applied individually to each order within the relevant block trade to confirm those individual orders also met or exceeded the Minimum Volume Threshold requirement.
11. On the relevant days, ABN AMRO had a block trade checklist, which included a check for the Minimum Volume Threshold. However, the checklist did not specify the need to

check whether allocations for split orders were also greater than or equal to the Minimum Volume Threshold. Further, ABN AMRO's procedures document dealing with block trades placed considerable reliance on hyperlinks to the underlying obligations, rather than providing key details concerning those obligations in the procedures document itself.

12. The relevant block trades were brought to ABN AMRO's attention as a result of ASIC issuing a notice under section 912C of the Corporations Act on 12 May 2021 following identification of several unusual split allocations.

The determination of penalty

13. In determining the appropriate penalty, the MDP considered the four key factors set out in *ASIC Regulatory Guide 216: Markets Disciplinary Panel*, namely:
 - (a) the character of the conduct;
 - (b) the consequences of the conduct;
 - (c) the participant's compliance culture; and
 - (d) remedial steps taken by the participant.

Character of the conduct

14. The MDP characterised ABN AMRO's conduct in registering the relevant block trades without checking the underlying split allocations as careless rather than intentional or reckless. The MDP considered the conduct was in the less serious range. The duration of the conduct was relatively short, although the MDP noted that ABN AMRO's internal reviews did not identify the conduct and accordingly the duration may have been longer if ASIC had not brought the conduct to ABN AMRO's attention.

Consequences of the conduct

15. The MDP considered that the consequences of the conduct were minor. ABN AMRO did not charge any brokerage for the relevant block trades and ABN AMRO RE charged the Underlying Client only a relatively insignificant amount for the relevant block trades. Further, there was no evidence before the MDP that clients or other persons had suffered losses as a result of the conduct.

Compliance culture

16. At the times of the alleged contraventions, ABN AMRO had policies and procedures in place dealing with Rule 3.4.2(1). However, the MDP considered that there were some shortcomings in those documents and related processes. In particular:
 - (a) ABM AMRO's policies and procedures in relation to Rule 3.4.2(1) were overly reliant on hyperlinks referencing the underlying obligations and did not contain sufficient detail to alert a reader to the substance of those obligations; and

- (b) ABN AMRO had provided the Underlying Client with direct market access to the ASX 24 market and allowed it to submit the relevant allocations at a time when the Underlying Client's traders had not undertaken training on the requirements of the ASX 24 Market.
17. ABN AMRO co-operated with ASIC throughout the investigation and did not dispute any material facts.
18. As to ABN AMRO's past disciplinary or compliance history, on 11 March 2016, ABN AMRO was given an infringement notice MDP 02/16 (**2016 Infringement Notice**) which concerned a contravention of Rule 3.3.1A(1) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the previous equivalent of Rule 3.3.1A(1) of the Rules) in relation to ABN AMRO's failure to make an enquiry through the message facility of the Trading Platform on 20 December 2013 and 15 May 2014.
19. ASIC Regulatory Guide 216 *Markets Disciplinary Panel (RG 216)* states at paragraph RG 216.94 that adverse findings in relation to conduct that occurred more than six years before the conduct being considered by the MDP may be given little weight. Given the passage of time, the MDP did not give any weight to the 2016 Infringement Notice in determining the appropriate penalty.

Remedial steps

20. ABN AMRO undertook a compliance review and implemented subsequent remedial action in relation to the alleged contraventions. This includes the following:
- (a) ABN AMRO updated its procedures to include a checklist to confirm that if the allocation for a block trade is a split, the split should also meet the Minimum Volume Threshold;
- (b) in-house and external training (including as to block trade requirements) has been provided to relevant ABN AMRO employees;
- (c) the onboarding of clients' traders has been strengthened, with all traders of derivative broker clients executing in the Australian futures markets required to complete ASX 24 Introduction Training and ASX 24 Enhanced Training before on-boarding; and
- (d) conducting a check to ensure all existing Underlying Client's traders have also completed this training.

Penalties

21. The maximum penalty for a single contravention is 15,000 penalty units. The low range would be up to 5,000 penalty units. The MDP considered the circumstances of the first alleged contravention (in relation to the 7 January 2021 block trade) are such that a penalty of 400 penalty units is appropriate. This represents 8% of 5,000 penalty units and reflects a penalty at the lower end of the low range.
22. The MDP considered that given the circumstances of the second and third alleged

contraventions (in relation to the 14 April 2021 and 15 April 2021 block trades), they should be treated as a single course of conduct since the alleged contraventions only occurred a day apart and occurred in factually similar circumstances. In addition to the circumstances taken into account in determining the penalty for the first alleged contravention, the MDP noted that at the time of the second and third alleged contraventions, ABN AMRO had not yet identified the first alleged contravention.

23. The infringement notice regime does not allow for global penalties to be determined for multiple contraventions because separate penalties must be specified for separate contraventions. Nonetheless, as noted in RG 216 at RG 216.111, the infringement notice regime does not otherwise restrict the approach the MDP can take in relation to multiple contraventions where there is a factual overlap in the circumstances of the matter. For example, it is open to the MDP to specify a single penalty for one of the contraventions and specify no penalty for the other factually related contraventions.
24. Given the close connection between the second and third alleged contraventions, the MDP has specified:
 - (a) a penalty of 600 penalty units (representing 12% of 5,000 penalty units and reflecting a penalty at the lower end of the low range) for the second alleged contravention; and
 - (b) no penalty for the third alleged contravention.
25. Finally, the MDP noted that the penalties imposed in relation to the alleged contraventions are significantly greater than the penalties that would have been imposed had the conduct occurred under the previous penalty regime, which applied in relation to conduct occurring before 13 March 2019.
26. Under the previous penalty regime, the maximum penalty that could be specified in an infringement notice for a contravention of Rule 3.4.2 was \$60,000 (being no more than 60% of the maximum penalty of \$100,000). The penalties imposed in the current circumstances are consistent with the fact that the legislative reforms made by the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* significantly increased the maximum penalties that can be specified in an infringement notice for each alleged contravention of a rule in relation to conduct that occurs wholly on or after 13 March 2019.

No adverse finding regarding Rule 2.2.8

27. The MDP also made a finding that it did not have reasonable grounds to believe that ABN AMRO contravened Rule 2.2.8 of the Rules.
28. Rule 2.2.8 provides:

2.2.8 Supervisory procedures

A Market Participant must have appropriate supervisory policies and procedures to ensure compliance by the Market Participant and each person involved in its business as a Market Participant with these Rules, the

operating rules of each Market of which it is a Participant, and the Corporations Act.

29. As discussed at paragraph 16 above, the MDP considered that there were some shortcomings in ABN AMRO's supervisory policies and procedures as they related to the Minimum Value Threshold requirement (for example, the high-level approach in the checklist to the Minimum Value Threshold requirement and the extent to which hyperlinks were relied on). However, in the context of the overall adequacy of those policies and procedures, these shortcomings were relatively minor and were not material.
30. The MDP noted that a contravention of a Rule does not automatically mean that there is a contravention of Rule 2.2.8. Further, the MDP considered that the compliance review, frank internal assessment of the underlying issues, subsequent training and changes that were implemented following identification of the relevant block trades were consistent with ABN AMRO having compliance processes and procedures that are generally appropriate for the purposes of Rule 2.2.8.

Other information

The maximum pecuniary penalty payable under an infringement notice in relation to an alleged contravention of subsection 798H(1) of the Act, by reason of contravening Rule 3.4.2(1) of the Rules, is \$3,300,000.

Note: The maximum pecuniary penalty is 15,000 penalty units for a body corporate: see subsection 798K(2) of the Act. The amount of a penalty unit as at the time of the conduct to which this infringement notice relates was \$222: see subsection 4AA(1) of the *Crimes Act 1914*.

The maximum pecuniary penalty that a Court could order ABN AMRO to pay for contravening subsection 798H(1) of the Act (a civil penalty provision), by reason of contravening Rule 3.4.2(1) of the Rules, is determined by section 1317G of the Act.

Note: Under subsections 1317G(2) and (4), the maximum pecuniary penalty is the greatest of:

- (a) 50,000 penalty units; and
- (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
- (c) either:
 - (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
 - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

To comply with this infringement notice, ABN AMRO must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to ABN AMRO and ends 27 days after the day on which it is given. This penalty can be paid using the method detailed in the email by which this notice is given.

The effects of compliance with this infringement notice are:

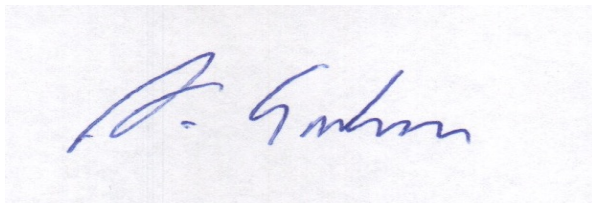
- (a) any liability of ABN AMRO to the Commonwealth for the alleged contraventions of subsection 798H(1) of the Act is discharged; and
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against ABN AMRO for the conduct specified in the infringement notice as being 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 sections 914A, 915B, 915C or 920A of the Act against ABN AMRO 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) ABN AMRO is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) ABN AMRO is not taken to have contravened subsection 798H(1) of the Act.

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

ABN AMRO 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.

The unique code for this notice is MDP 0420/22-1.



Anthony Graham

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.