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Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: Life Trading Pty 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*.

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ASIC
Australian Securities &
Investments Commission



Markets Disciplinary Panel

PART 7.2A OF THE CORPORATIONS REGULATIONS 2001

INFRINGEMENT NOTICE

To: Life Trading Pty Ltd
ACN 603 549 748

Matter: MDP 112/20

Date given: 25 May 2021

TAKE NOTICE: The Australian Securities and Investments Commission (“ASIC”) gives this infringement notice to Life Trading Pty Ltd (“Life Trading”) 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, Life Trading must do both of the following:

- (a) pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$200,000**;
- (b) enter into an undertaking under regulation 7.2A.01 of the Regulations on the terms specified in paragraph 26 of this notice.

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

Background

1. Rule 2.2.8 of the Futures Rules states that:

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.

2. ASIC Regulatory Guide 266: *Guidance on ASIC market integrity rules for participants of futures markets* which, at RG 266.94 – RG 266.96, states that participants are expected to have supervisory policies and procedures that:

- (a) are in writing;
- (b) are appropriate for the nature, size and complexity of their business;

- (c) are designed to reasonably supervise persons involved in the business; and
 - (d) demonstrate that the policies and procedures have been carried out.
3. Life Trading became a Market Participant on 28 January 2019. Its principal activities were proprietary trading (i.e. trading on its own behalf and not on behalf of clients) in futures contracts on the ASX 24 Market. The three main futures contracts it traded were Share Price Index futures (SPI futures), 10-year Commonwealth Treasury Bond futures and 3-year Commonwealth Government Bond futures. From February 2020, Life Trading became authorised to deal in derivatives on behalf of wholesale clients.
 4. Life Trading does not contest that it did not have appropriate supervisory policies and procedures, including policies relating to record-keeping requirements, during the period of 17 months between 28 January 2019 and 4 June 2020 (the “relevant period”).
 5. The Markets Disciplinary Panel (the “MDP”) has reasonable grounds to believe that Life Trading contravened Rule 2.2.8 throughout the relevant period.

Inadequate written policies and procedures

6. The MDP is satisfied that the supervisory policies and procedures of Life Trading that were in existence were originally prepared by an external compliance consultant for a different Market Participant, operated by the same key person as Life Trading, and with a similar business model as Life Trading. Those original supervisory policies and procedures were adapted and updated by Life Trading, but they remained inadequate for a significant period of time.
7. The MDP is satisfied that Life Trading had no written policies or procedures on how to conduct a trade surveillance, including how to identify possible instances of market manipulation or other market misconduct. There were no written policies or procedures that cover such things as common types of market manipulation, triggers which might be relied on to conduct further inquiries, processes for extracting and filtering data, or incident escalation paths.

Ad hoc post-trading reviews and real-time live reviews

8. The MDP is satisfied that the ad hoc post-trading reviews and real time live reviews of futures trading by its traders that Life Trading asserted it had conducted were not adequate or appropriate.
9. The ad hoc post-trading reviews and the sporadic real-time live reviews (done either physically, or remotely using X-Risk) may have had some effectiveness in detecting market misconduct of its traders (if it were occurring), but that would have been more attributable to chance rather than by design.
10. The MDP is also not satisfied of Life Trading’s claim that it conducted over 100 monthly and ad hoc reviews during the relevant period. The MDP draws adverse inferences from the poor record-keeping of such reviews claimed to have been conducted by Life Trading.
11. The MDP is satisfied that it was only since April 2020 that Life Trading has had a documented policy relating to trading and trader reviews, despite Life Trading

becoming a Market Participant in January 2019. Under this documented policy, traders (together with the compliance officer) review each other's real-time trading to ensure compliance with market rules, and record the fact that the review had taken place.

External compliance reviews

12. Life Trading retained two external compliance consultants during the relevant period.

First compliance review

13. The first external compliance consultant was engaged in October 2019 following the commencement of ASIC's investigation into Life Trading. A compliance review was conducted by the consultant covering the period from 1 July 2019 to 30 September 2019. A final report of the consultant was given to Life Trading on 11 March 2020.
14. Of the 17 topics considered in the reports, the consultant was unable to properly consider nine of the topics due to the consultant not being provided with sufficient access to information or records. The explanations provided by the Chief Operating Officer and the Chief Executive Officer / Designated Risk Manager as to why the full set of information was not provided to the consultant were unsatisfactory and lacked a genuine commitment to assisting with a fulsome review. There was also a failure by those members of senior management to adequately review the draft and final report.

Second compliance review

15. A second external compliance consultant was engaged in May 2020. Life Trading asserts the reason for engaging a second compliance consultant was because it formed the view that it needed further guidance on the steps it needed to take for best practice in complying with its relevant obligations.
16. The scope of that review included an analysis of Life Trading's ASX24 policies, processes and systems to produce a rating report of current practice against required practice. The final report of the consultant made 12 recommendations, ten of which have been implemented by Life Trading.

The determination of penalty

17. 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.
18. The MDP considers Life Trading acted negligently in relation to its failure to have appropriate supervisory policies and procedures to ensure compliance with the Futures Rules. The MDP is of the view that Life Trading should have known and understood that the rights and privileges associated with direct participation in

the ASX24 market come with significant responsibilities and obligations, including the implementation of a suitable supervisory and compliance framework with appropriate policies, procedures and resources. Life Trading's framework for the supervision of traders was under-resourced, uncoordinated and undocumented for the relevant period, particularly during the early part of the relevant period.

19. The MDP considers that supervisory policies and procedures should be tailored to the nature, size and complexity of the ASX 24 business of the market participant, but this does not excuse a poor supervisory and compliance framework established from the outset and which persisted for a period of approximately 17 months. A market participant needs to be in a position to comply with the rules from day one.
20. The MDP was not satisfied that Life Trading's deficiencies in its supervisory framework resulted in loss to clients. The MDP notes that Life Trading engaged solely in proprietary trading until February 2020 and had no clients up until that time.
21. The MDP considers that Life Trading benefitted from the deficiencies in its supervisory framework because it had deferred the compliance costs that should have been incurred earlier to promptly address those deficiencies.
22. Life Trading's compliance culture throughout the relevant period was lax, with minimal commitment to ensuring an appropriate supervisory framework was implemented. There was a lack of pro-active engagement in relation to supervisory compliance, with the drivers of meaningful change being primarily attributable to responding to ASIC's investigation. Life Trading fully co-operated with ASIC during its investigation.
23. Life Trading does not have any other disciplinary history before the MDP. However, Life Trading only became a market participant in January 2019 and the MDP has made adverse findings in this matter in relation to its conduct from that time.
24. The MDP notes the remediation steps that Life Trading have subsequently taken. The MDP notes that Life Trading has gradually made a number of improvements to its supervisory and compliance procedures. These include:
 - (a) in March 2020, Life Trading implemented the "ASX 24 Trade Surveillance Policies and Procedures" which details processes for determining surveillance alerts, setting and testing alert parameters, reviewing order and trade surveillance alerts, and recording and escalating alert reviews to ensure compliance;
 - (b) in June 2020, Life Trading introduced a formal CPD training programme for its traders, including coverage of regulatory compliance;
 - (c) in August 2020, Life Trading commenced using OneTick Surveillance to review trading data from orders placed from that month onwards;
 - (d) in November 2020, Life Trading implemented the:
 - (i) "Trader Compliance Policy and Procedures" which details ethical, legal

- and regulatory responsibilities to prevent inappropriate trading behaviour and consequences for non-compliance;
- (ii) “ASX24 Wash Trade Review Process” which deals with how to comply with the rules to address issues in relation to “wash trades”;
 - (iii) “Compliance Register Policy and Procedures” which details maintenance and review of Life Trading’s compliance registers; and
- (e) in February 2021, Life Trading hired a full-time risk and compliance officer with 20 years of experience.
25. Despite the remedial steps taken by Life Trading, the MDP still remains concerned about the appropriateness of Life Trading’s supervisory policies and procedures.

Terms of undertaking

26. Life Trading must also enter into an undertaking (the “enforceable undertaking”) under regulation 7.2A.01 of the Regulations on the following terms:
- (a) Life Trading undertakes to request ASIC to approve, within 15 business days of the date that ASIC accepts the enforceable undertaking (or within such longer period as may be agreed by ASIC and Life Trading):
 - (i) the appointment of an independent expert that meets the criteria in subparagraph (c); and
 - (ii) draft terms of engagement for that expert that meet the requirements of this paragraph;
 - (b) if ASIC approves the draft terms of engagement and the independent expert following a request by Life Trading under subparagraph (a), Life Trading undertakes to appoint the approved independent expert on the terms approved by ASIC, within 10 business days of receiving ASIC’s approval (or within such longer period as may be agreed by ASIC and Life Trading);
 - (c) Life Trading undertakes to nominate, under sub-subparagraph (a)(i), an independent expert who, in Life Trading’s opinion:
 - (i) has the necessary expertise, experience and operational capacity to perform the role contemplated by the enforceable undertaking; and
 - (ii) is independent of Life Trading, its related bodies corporate and its officers at the time of appointment, and who will at all material times be capable of exercising objective and impartial judgement;
 - (d) Life Trading undertakes to ensure the terms of the independent expert’s engagement provided to ASIC for approval under sub-subparagraph (a)(ii):
 - (i) require the independent expert to:

- (I) review and give a written report, on whether, in the opinion of the independent expert, Life Trading has appropriate supervisory policies and procedures to ensure compliance by Life Trading and each person involved in its business as a Market Participant with the Futures Rules, the operating rules of each Market of which it is a Participant, and the Act;
 - (II) review Life Trading's supervisory policies and procedures for the period from 1 July 2020 to 30 April 2021, taking into account ASIC Regulatory Guide 266: *Guidance on ASIC market integrity rules for participants of futures markets* at RG 266.94 – RG 266.96; and
 - (III) give the written report to Life Trading and ASIC by 31 August 2021 (or such later date as may be agreed by ASIC and Life Trading) on the outcome of the review, including identifying any deficiencies in Life Trading's supervisory policies and procedures and, where deficiencies are identified, making recommendations for how to remedy those deficiencies;
- (ii) include a statement to the effect that the work of the independent expert is being carried out for Life Trading and ASIC and acknowledging that ASIC is relying on the work of the independent expert;
 - (iii) include a statement that upon request by ASIC, ASIC is to be copied into all or some communications between Life Trading and the independent expert;
 - (iv) require the independent expert to notify ASIC where a conflict of interest arises during the engagement or when the independent expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgment; and
 - (v) include an acknowledgement that, in relation to the written report to be given to ASIC and Life Trading, ASIC may from time to time publicly refer to the content of the report, and may make a summary of the content of the report or a statement that refers to the content of the report public;
- (e) Life Trading undertakes to decide by 30 September 2021 (or such later date as may be agreed by ASIC and Life Trading) whether to implement a recommendation made in the written report and:
 - (i) if Life Trading decides not to implement a recommendation—by that date to give a written explanation to ASIC of the reasons for that decision; and
 - (ii) if Life Trading decides to implement a recommendation—by that date to notify ASIC of a timeframe for when it will be implemented;

- (f) Life Trading undertakes to:
 - (i) implement all recommendations that it decides to implement within the timeframes notified to ASIC; and
 - (ii) notify ASIC when such recommendations have been implemented;
- (g) Life Trading undertakes to permit the independent expert to have reasonable access to Life Trading's systems and records, and to interview persons involved in its business, for the purposes of enabling the expert to carry out the review and prepare the report;
- (h) Life Trading undertakes to give the independent expert any information or explanation reasonably requested by the expert of any matter connected with the review and report;
- (i) Life Trading acknowledges that ASIC can make publicly available the following information:
 - (i) a copy of the enforceable undertaking;
 - (ii) a summary of the content of the written report by the independent expert;
 - (iii) a summary of which recommendations of the independent expert that Life Trading decided to implement, or not implement (and reasons);excluding information of which ASIC is satisfied would be unreasonable to make publicly available because it would unreasonably affect the business, commercial or financial affairs of Life Trading otherwise than in a way that arises from the outcomes of the undertaking;
- (j) Life Trading also acknowledges that:
 - (i) ASIC will from time to time publicly report about compliance with the enforceable undertaking; and
 - (ii) the enforceable undertaking has no operative force until accepted by ASIC; and
- (k) Life Trading and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Other information

In relation to the conduct set out in this infringement notice:

- (a) the maximum pecuniary penalty that a Court could order Life Trading to pay for contravening subsection 798H(1) of the Act, by reason of contravening Rule 2.2.8, is \$1,000,000; and

- (b) 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 2.2.8, is \$600,000.

To comply with this infringement notice, Life Trading must pay the penalty, and enter into the undertaking with ASIC, within the compliance period. The compliance period starts on the day on which this notice is given to Life Trading and ends 27 days after the day on which it is given. The 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 Life Trading 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 Life Trading 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 Life Trading 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) Life Trading is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) Life Trading is not taken to have contravened subsection 798H(1) of the Act.

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

Life Trading 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

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.