



ASX 24 NOTICE NO. 045/13

Date of Issue: 8 March 2013
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Disciplinary Matter

The Chief Compliance Officer ("CCO") of ASX Compliance Pty Limited ("ASX Compliance") has determined the following:

Contravention 1

Merrill Lynch (Australia) Futures Limited ("MLAFL") contravened ASX 24 Operating Rules 4800 and 4801(a) on two occasions on 14 June 2012 in that it effected Exchange for Physical ("EFP") transactions for its indirect clients:

- i) not in accordance with the ASX 24 Operating Rule Procedures (the "Procedures"). The two EFP transactions were used to conduct an off-market roll trade without a bona fide physical transaction being completed, contrary to the requirements of Procedure 4800.1; and thereby
- ii) a genuine transaction in a physical commodity or instrument was not executed.

Contravention 2

MLAFL contravened ASX 24 Operating Rules 4800 and 4801(a) on two occasions on 13 April 2012 and 26 April 2012 in that it effected EFP transactions for its clients:

- i) where a genuine transaction in a physical commodity or instrument was not executed; and thereby
- ii) contrary to the requirements of Procedure 4800.1.

Contravention 3

MLAFL contravened ASX 24 Operating Rules 4800, 4801(a) and 4803 on nine occasions between 3 January 2012 and 10 July 2012 in that it effected EFP transactions for its client:

- i) where it acted for its client transacting as both the buyer and seller of both components of the EFP transactions; and
- ii) a genuine transaction in a physical commodity or instrument was not executed; and thereby
- iii) contrary to the requirements of Procedure 4800.1.

Contravention 4

MLAFL contravened ASX 24 Operating Rule 4801(c) on 20 occasions between 6 January 2012 and 9 July 2012 in that it effected EFP transactions for its clients where the buyer of the Futures Market Transaction was not the seller of the physical commodity or instrument and/or the seller of the Futures Market Transaction was not the buyer of the physical commodity or instrument.



Contravention 5

MLAFL contravened ASX 24 Operating Rule 4803 on 27 occasions between 4 January 2012 and 22 June 2012 in that it effected EFP transactions where its clients were transacting as both the buyer and seller of both components of the EFP transactions.

(Contraventions 1 to 5 are collectively referred to as the "Contraventions")

MLAFL did not contest the Contraventions.

The CCO imposed a fine of \$40,000 (plus GST).

The circumstances of this matter are as follows:

Contravention 1

On 13 June 2012 an MLAFL trader was responsible for two separate trading books. The trader was attempting to manage the June roll and attempted to do part of the roll via two EFPs. On 5 July 2012 ASX wrote to MLAFL questioning whether the roll trade was part of a bona fide physical transaction. On 12 July 2012 MLAFL wrote to ASX and confirmed the circumstances around these trades were not done in accordance with the relevant Rules and Procedures.

On 26 July 2012 MLAFL wrote to ASX advising that it had conducted a review of EFPs registered on ASX 24 arising from its Fixed Income Currencies & Commodities ("FICC") business unit in 2012 "the Review".

The Review uncovered Contraventions 2 to 5.

Contravention 2

MLAFL effected two EFP transactions on 13 April 2012 and 26 April 2012 respectively for its clients, where a genuine transaction in a physical commodity or instrument was not executed.

Contravention 3

MLAFL effected nine EFP transactions between 3 January 2012 and 10 July 2012 where the two sides of the EFP were within the same legal entity and the physical leg of the EFP was not booked.

Contravention 4

MLAFL effected 20 EFP transactions between 6 January 2012 and 9 July 2012 where both the physical and futures legs were booked but there were three parties to the transactions. These EFP transactions occurred in two ways. One type involved three internal legal entities being involved in an EFP transaction instead of two because of split books set up with different legal entities. The other type involved EFP transactions where a physical transaction took place between an external client and an internal entity. The internal entity then undertook an EFP with a different internal entity.

Contravention 5

MLAFL effected 27 EFP transactions between 4 January 2012 and 22 June 2012 where the two sides of the EFP were within the same legal entity.

A total of 60 EFP transactions executed by MLAFL between 3 January 2012 and 10 July 2012 appear to have breached the requirements of the ASX 24 Operating Rules.

Following the Review MLAFL implemented the following remedial measures:



- all front office staff effecting EFPs have undergone enhanced training relevant to the EFP trading and booking functions, both onshore and offshore;
- all middle office staff involved in EFP registration have undergone enhanced training relevant to the EFP booking functions;
- relevant training is mandatory for all new staff involved in EFP trading or registration must undergo enhanced mandatory training relevant to the EFP trading, booking and registration functions;
- an internal template has been implemented for all EFPs registered by MLAFL;
- all inter-group EFPs to be registered on ASX24 require compliance pre-approval; and
- the compliance monitoring and testing program has been updated to incorporate regular reviews of EFPs.

In determining penalty, the CCO, among other things, took into account the following matters:

- (a) The Contraventions occurred over an extended period of time (at least six months) and were recurring. ASX has therefore formed the view that this is a Material Contravention.
- (b) The Contraventions were inadvertent acts on the part of the traders involved.
- (c) The Contraventions occurred because of a misunderstanding by individual traders in the market with respect to a subset of EFP booking requirements under the rules and a weakness in MLAFL's risk management framework to initially identify the incorrect EFP subset booking.
- (d) MLAFL derived no financial benefit from the Contraventions.
- (e) The Contraventions had no impact any of MLAF's clients.
- (f) The Contraventions had no impact on the ASX24 market.
- (g) The Contraventions did not involve MLAFL acting unconscionably towards clients or counterparties.
- (h) MLAFL promptly investigated Contravention 1 and self-reported Contraventions 2 – 5 following its investigation.
- (i) MLAFL assisted ASX in its investigation.
- (j) MLAFL has implemented meaningful measures to prevent a recurrence of the misconduct
- (k) MLAFL's disciplinary history, including no prior EFP-related contraventions.
- (l) The totality principle.

Sanction Guidelines

As the contravening conduct occurred after 1 August 2010, that being the effective time under the ASX Enforcement and Appeals Rulebook, the CCO was bound by the sanction guidelines (Annexure A to the Rulebook) in making his determination as to appropriate sanction in this matter.

The CCO determined that given the mitigating circumstances in this matter a fine of \$40,000 (plus GST) was an appropriate sanction.

The CCO is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and its Participants.