

ASX Disciplinary Matter – Interactive Brokers Australia Pty Ltd ('IBA')

ASX's Chief Compliance Officer ('CCO') has determined that Interactive Brokers Australia Pty Ltd ('IBA') did not comply with:

- (a) ASX Operating Rule [3501], requiring a participant to provide ASX with a short sale report setting out the information required in the procedures by the time specified in the procedures ('**Contravention 1**');
- (b) ASX Operating Rules [6704] and [6710], requiring a participant to ensure that (amongst other things):
 - information it gives to ASX is complete, accurate and not misleading; and
 - a return or report it is required to submit is in the manner and form specified in the rule ('**Contravention 2**');
- (c) ASX Operating Rule [5000] and its related procedure, requiring a participant to notify ASX in writing immediately if it becomes aware that it has breached any of the rules or the procedures and that breach is significant ('**Contravention 3**'); and
- (d) ASX Operating Rule [1400], requiring a participant to comply with the admission requirements at all times, including the requirement in rule [1000](d) that an applicant has adequate resources and processes to comply with its obligations under the rules ('**Contravention 4**'),

together, the '**Contraventions**'.

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

The circumstances of this matter are:

1. On 10 April 2017, as part of a project to migrate the Australian business previously conducted by Interactive Brokers LLC to IBA, responsibility for execution of Australian-listed products was transferred to IBA from a related entity, following which IBA acted as agent for, and on behalf of, its global affiliates in the execution of such products.
2. A software error arose in the course of the business transfer which continued undetected until around 12 November 2018 and which caused IBA to err when aggregating the number of short-sale transactions submitted by clients of an affiliate.
3. In a separate incident, commencing 24 September 2018 when IBA began executing trades on ASX CentrePoint, IBA's systems did not count short sales executed there towards its daily calculation of short sales for reporting.
4. On or about 8 November 2018, IBA was contacted by the Australian Securities and Investments Commission ('ASIC') regarding its short sale reporting, querying why some transactions were being reported to ASIC as short sales when the corresponding orders had not been tagged as short when they were routed to the market.
5. Beginning 13 November 2018, IBA conducted remediation of the Incidents, by which it:
 - changed the system logic underlying the IBA clearing system to ensure it only recorded short sale trades and disregarded the duplicate trades posted to the IBA affiliate omnibus account;
 - included all ASX CentrePoint short sales in its reports;

- instituted a daily monitoring program for three months to conduct spot-checks of the accuracy of its short sales reporting under ASX OR [3501];
 - updated technical specifications of IBA's proprietary system to calculate daily short sales; and
 - amended its processes for implementing new order books.
6. The information provided by IBA to ASX going to the extent of the inaccuracies indicated:
- Over the three specific days in its sample, IBA reported short sales in 376 securities, of which 339 were inaccurate.
 - The 1070 lines of CentrePoint Short Sales that were not reported between 24 September 2018 and 12 November 2018 represented 100% of short sales executed by IBA on this venue during this period.

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

- (a) ASX is required to collate the volumes of short sales in each security quoted on its markets for every trading day. This information is collected from each trading participant and the aggregated volumes are published by ASX, which informs the market of the total number of short sales in each security as well as the proportion of trades in the security that are short sales. This information assists investors and companies in explaining share price movements and making investment decisions. Accordingly, errors in the reporting of short sale volumes have the potential to negatively impact ASX's reputation. For this reason, ASX considers that its rules regarding short-sale reporting must be, and must be seen to be, appropriately enforced.
- (b) ASIC uses the short-selling data reported to and by ASX to monitor for and investigate potential breaches of short selling and market manipulation laws. If the short selling data provided to ASX is not accurate and reliable, this will hinder ASIC's ability to perform these important tasks. A breach of the ASX's short sale reporting requirements therefore has wider ramifications for the ASX market.
- (c) ASX considers breaches of regulatory reporting obligations that arise from flaws in a participant's systems and processes to be prima facie material, even where the magnitude of the mis-reporting may not seem quantitatively significant.
- (d) The incidents comprising the Contraventions indicate that IBA did not have adequate processes to ensure that changes to its systems were undertaken in a manner to comply with its short sale reporting obligations under ASX OR [3501] and [6710], and therefore also evidence a breach ASX OR [1000(d)].

ASX interprets ASX OR [1000(d)] and its equivalents in other rule books to require a participant to have adequate resources and processes to comply with all of its obligations under the rules, not just achieve a general level of compliance with those obligations as a whole.

- (e) The Contraventions were inadvertent and unintentional.
- (f) IBA did not derive a financial benefit from the Contraventions.
- (g) IBA did not act unconscionably towards, or otherwise unfairly take advantage of, clients or counterparties.
- (h) IBA reported the incidents comprising the Contraventions to ASX with candour as to the underlying facts.
- (i) IBA cooperated with ASX's investigation.
- (j) The remediation steps undertaken by IBA, including changes to its coding to address the error and changes to its procedures around execution venues, appear appropriate.
- (k) Based in part on the three days of sample data provided by IBA, each of which contained multiple breaches, ASX considers it reasonable to infer that IBA is likely to have committed multiple

breaches of ASX OR 3501, 6704 and 6710 over approximately 405 calendar days. Therefore, the Contraventions cannot be regarded as “isolated” but were composite, recurring, and occurred over an extended period of time.

- (l) IBA has a good history of complying with ASX’s operating rules.
- (m) ASX has applied the totality principle, where a single sum is sought that represents an appropriate penalty for multiple rule breaches arising from a single course of conduct. Having taken account of all the circumstances that have come to its attention, ASX considers that the penalty reasonably reflects the totality of IBA’s culpability for the events in question.

Sanction Guidelines

The CCO determined that, given the 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.