

Participant Circular

Date: 5 June 2002

Key topics

1. Intersuisse Limited
2. A Participating Organisation
3. Austock Brokers Pty Limited
4. Findlay & Co Stockbrokers Limited

Reading List

Compliance Managers
Client Advisers (Brokers)
DTR Operators
Managing Directors
Office Managers
Operations Managers (back office)

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No responsibility is accepted for any inaccuracies contained in the matter published.

DISCIPLINARY MATTERS

The Australian Stock Exchange Limited's National Adjudicatory Tribunal ("the Tribunal") has determined the following:

Intersuisse Limited ("Intersuisse") has been fined a total of \$45000 (plus GST) by the National Adjudicatory Tribunal ("the Tribunal") in relation to a breach of ASX Business Rules 2.2.4(1)(b)(i), 3.8(1) and 1.2.1(ii) (old rule). Intersuisse agreed to pay the fine on a non-admission basis without contesting the merits of the charges.

The circumstances of this matter are as follows:

At 15:32:16 on 30 August 2000, Intersuisse's client advisor ("the representative") caused Intersuisse to Bid for 500,000 \$9.00 Western Mining Corporation Limited Call Warrants ("WMCWDO") at 26.5 cents per warrant. As a result of this Bid at 15:32:19 Intersuisse purchased 500,000 WMCWDO ("the first transaction") from another Trading Participant ("the counterparty").

At 15:32:37 on 30 August 2000 the representative caused Intersuisse to Offer 500,000 WMCWDO to the market at 26.5 cents per warrant. At 15:33:14 the counterparty Bid for the 500,000 WMCWDO on Offer at 26.5 cents that resulted in a trade ("the second transaction") that had the effect of reversing the position assumed after the first transaction.

The Tribunal took into account that:

- The first and second transaction in WMCWDO were the only transactions in WMCWDO effected on SEATS on 30 August 2000;
- Prior to the transactions, the representative and the counterparty had two telephone conversations initiated by the counterparty, in which they discussed trading in WMCWDO, including when Intersuisse should Bid, and the quantity and price for the first transaction;
- After the first and second transaction were effected, the representative and the counterparty had a further telephone conversation during which the representative said to the counterparty, "Is that what you were after";
- The telephone conversations between the representative and the counterparty and the manner of the execution of the transactions indicated that an arrangement had been entered into between the parties whereby the representative intended to create a false and misleading appearance of active trading in WMCWDO or with respect to the market for or the price of those securities;
- Intersuisse failed to dispatch contract notes to its client in respect of the purchase and sale of WMCWDO;

- The representative completed an order record on behalf of Intersuisse's client which, on the representative's version, was inconsistent with the client's instructions because it did not state advice was given by the representative or that the client had given the representative discretion to sell the warrants.

The Tribunal noted the proactive approach taken by Intersuisse's Compliance Committee and the action taken by Intersuisse once the issues had been identified with respect to the transactions. This has included the introduction of random checking of the adequacy of record keeping and the prompt issue of contract notes to clients. The Tribunal noted Intersuisse's statement of its ongoing commitment to staff compliance education and monitoring and upgrading internal control and compliance rules and procedures. The Tribunal also noted the representative is no longer employed by Intersuisse.

A Participating Organisation has been censured by the National Adjudicatory Tribunal in relation to a breach of ASX Business Rule 1.2.2(4).

The circumstances of this matter are as follows:

- Between 22 June 2001 and 3 December 2001 client funds were drawn from the Participating Organisation's Trust Account, due to its Bank deducting fees from its Trust Account;
- The total deducted was \$455 in 41 transactions. The Participating Organisation was aware that its Bank was deducting the fees from its Trust Account but did not take action to prevent this occurring. The Participating Organisation deposited money into its Trust Account to compensate for the deduction of the fees;
- The withdrawal of fees by the Bank only stopped when it's the Participating Organisation's external auditors queried the deduction of the fees. The matter was then reported to ASX by the Participating Organisation.

The Tribunal took into consideration that the Participating Organisation had now implemented training and revised control procedures and that it had self-reported the breach as soon as it came to its attention.

Austock Brokers Pty Limited ("Austock") has been fined \$5,000 (plus GST) by the National Adjudicatory Tribunal in relation to a breach of ASX Business Rule 2.8.3(1)(c).

The circumstances of this matter are as follows:

- On 7 August 2001, Austock executed a "block special crossing" in the quoted securities of A.B.C Learning Centres Limited pursuant to ASX Business Rule 2.8.3;
- An analysis of the contract notes in respect of the trades indicated that Austock incorrectly aggregated orders on both sides of the Block Special Crossing in contravention of ASX Business Rule 2.8.3(1)(c).
- Some time prior to executing the "block special crossing" in connection with another proposed transaction which did not proceed, Austock's advisor had received advice from its corporate counsel concerning the rules for special crossing.

With respect to the breach the Tribunal took into consideration that:

- The advisor was experienced and should have been aware of the relevant Business Rules;
- The advisor had previously received advice from its corporate counsel concerning the rules for special crossing;
- The Participating Organisation has now implemented a policy whereby all proposed special crossings are to be approved by the compliance officer before being executed; and
- The circumstances were self-reported.

Findlay & Co Stockbrokers Limited ("Findlay") has been fined \$1,000 (plus GST) with respect to a breach of ASX Business Rule 3.12(2). The circumstances of this matter are that in the period from 1 June 2001 to 21 December 2001 Findlay's nominee company was not a directly, legally and beneficially wholly owned subsidiary of Findlay.