



## ASX Circular

Date: 4 January 2012

### Key topics

1. Australian Investment Exchange Limited

### Reading List

Client Advisers  
Compliance Managers  
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 ASX Disciplinary Tribunal (the 'Tribunal') has imposed a fine of \$50,000 (plus GST) on Australian Investment Exchange Limited ('AUSIEX') for the incorrect treatment of certain Application Monies<sup>1</sup> and Additional Margins<sup>2</sup> which were incorrectly withdrawn from the Trust Account and transferred to the Trading Account. This treatment contravened the following ASX Market Rules in effect at the time of the Contraventions:

- a) ASX Market Rule 7.11.1 – AUSIEX failed to comply with the relevant provision of the Corporations Act 2001 (Cth) (the 'Act') and the Corporations Regulations 2001 (Cth) (the 'Regulations') in relation to Application Monies and Additional Margins for the period from April 2009 to 3 March 2010 ('Contravention 1'); and
- b) ASX Market Rule 7.11.10 – AUSIEX failed to perform reconciliations that were accurate in all respects in that those reconciliations failed to identify all Application Monies and Additional Margins that were required by the Act to be held in a Trust Account for the period required by the Act and the time, form and manner set out in the Procedures from or around 6 October 2009 to 3 March 2010 ('Contravention 2').

AUSIEX elected not to contest the contraventions before the Tribunal.

The circumstances of the matter are as follows:

At all material times AUSIEX operated the Trust Account into which it deposited Application Monies and Additional Margins. The System used to facilitate this operation is an automated back office system that is used extensively in the Australian financial markets (the 'System'). In early 2010, AUSIEX discovered the incorrect treatment of certain Application Monies and Additional Margins by the System.

Between April 2009 and 3 March 2010, AUSIEX's clients transferred funds to AUSIEX – when buying rights on market – for the purposes of taking up entitlement issues, applying for securities or taking up other types of offers for securities by an Issuer.

When a client of AUSIEX applied for securities on market through AUSIEX, a 'renounceable issue corporate action' was generated in its System whereby the System recognised the type of transaction in a default setting and automatically generated an 'application money' account which was attached to the trade on a confirmation note.

The client paid for rights and transferred the Application Monies to AUSIEX. The System flagged these items (Application Monies) as 'trustable' (i.e. monies to which s 981A and s 981B(1)(c) of the Act and Regulation 7.8.01(5) of the Regulations applied). Therefore the

1 Funds received from clients of AUSIEX and held by it on behalf of the client for the purposes of exercising rights issues upon acquisition of the right, or taking up any other type of offer for securities by an Issuer.

2 Funds paid by clients of AUSIEX and held by it on behalf of the client for the purposes of providing additional cash collateral required by AUSIEX in excess of and in addition to any cash or securities collateral required by the ACH Clearing Rules, in connection with the sale by the client of Options Market Contracts.

Application Monies appeared as items in the trust report and were deposited into the Trust Account on receipt from AUSIEX's clients. The Application Monies remained in the Trust Account until the date of the allocation of scrip (to the client).

The System failed, however, to retain the Application Monies as items in the trust report from the time of the allocation of the scrip to the client, to the date of payment to the company (Issuer). This failure by the System resulted in Application Monies received and subsequently paid to the Issuer being excluded from the Trust Account from the time of allocation of scrip to the date of payment, instead of being retained until the time of payment to the Issuer.

As the Application Monies that referred to the closed scrip lines did not appear on the items in the trust report, those funds were incorrectly withdrawn from the Trust Account and transferred to the Trading Account.

As a result, on one occasion in October 2009, AUSIEX failed to retain Application Monies in trust from the time of allocation of scrip to the payment of funds to the Issuer for the benefit of the persons entitled to that money and Application Monies, to the value of approximately \$18,750, which was withdrawn in error from the Trust Account.

The Additional Margins were monies to which Division 2 of Part 7.8 of the Act applied.

The relevant accounts used within the System for Additional Margins – 'Additional Margin Control Account' – were outside the range of 'trustable' accounts. As a result, the Additional Margins were being accounted for in a non-trustable account type, and the Additional Margins were transferred at the end of each day automatically and incorrectly from the Trust Account to the Trading Account.

Consequently, between April 2009 and 3 March 2010, Additional Margins to a total approximate value of \$457,515 ceased to be held in the Trust Account, on trust, for the benefit of the persons entitled to that money.

AUSIEX contravened Market Rule 7.11.10 by failing to perform the reconciliations required by the Rule in a manner which would identify all Application Monies and Additional Margins that were required by the Act to be held in a Trust Account until such time as the Application Monies and Additional Margins were not required to be held in trust.

AUSIEX, while performing the reconciliations in accordance with the form set out in the ASX Market Rules and the corresponding Procedure, did not perform the reconciliation in a manner which included a process by which AUSIEX could manually (if necessary) identify all Application Monies and Additional Margins to ensure that the Application Monies and Additional Margins were treated in accordance with requirements of the ASX Market Rules and the Act.

In determining penalty, the Tribunal took into account a number of matters, including the following:

- AUSIEX fully co-operated with ASX in its investigation into the contraventions;
- the misconduct was unintentional;
- at no stage was any AUSIEX client negatively impacted or any market transaction not enabled as a result of the contraventions;
- the misconduct was self-reported in a timely and comprehensive manner;
- there was no commercial advantage or financial benefit obtained as a result of the misconduct;
- AUSIEX has promptly implemented remedial measures to prevent any recurrence of the contravening conduct;
- AUSIEX has a previous disciplinary history;
- the relevant misconduct occurred over an extended period of time (approximately 12 months); and
- the relevant conduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates.

## Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal was bound by the sanction guidelines (Annexure A to the Rulebook) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the contravention of the ASX Market Rules was appropriately classified as a Level 2 (Serious Contravention), for which the applicable penalty range is \$20,000 - \$100,000 (plus GST).

The Tribunal considered the aggravating and the mitigating circumstances in each contravention.

Given the aggravating and mitigating circumstances in this matter, the Tribunal determined that the total fine of \$50,000 (plus GST) for both contraventions represents an appropriate sanction in the circumstances.

The Tribunal's opinion is that this sanction will serve as a deterrent to other participants (and their representatives) from engaging in similar misconduct while at the same time appropriately serve the interests of ASX and market participants by supporting the integrity of the market it operates.

On 1 August 2010, the supervision of trading on Australia's domestic licensed markets and the supervision of trading participants transferred from ASX to the Australian Securities and Investments Commission (ASIC). The conduct that is the subject of these contraventions occurred prior to the transfer date. ASX will continue to manage, and bring before the Tribunal, disciplinary matters for potential breaches of its operating rules occurring before the transfer date.

As part of the transfer, a number of changes were made to the rules, including the replacement of the ASX Market Rules by the ASX Operating Rules (administered by ASX) and the ASIC Market Integrity Rules (ASX Market) (administered by ASIC). Potential operating rule breaches which occurred prior to 1 August 2010 will be dealt with in accordance with the rules in place at the time of the alleged breach.