

ASX Circular

Date: 18 January 2011

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 determined that Australian Investment Exchange Limited ('AIXE') contravened ASX Market Rule 13.1.5(a)(i), and thereby ASX Market Rule 13.1.4(a), between 19 April 2007 and 16 June 2007 inclusive (the 'Relevant Period'), by failing to have and maintain the necessary organisational and technical resources to ensure that the Trading Messages it submitted on behalf of its client ('the client') in relation to the fully paid ordinary shares of Coal Fe Resources Limited ('CES') did not interfere with the efficiency and integrity of the equities market operated by ASX.

AIXE did not contest the contravention before the Tribunal.

The Tribunal imposed a total fine of \$50,000 (plus GST).

The circumstances of the matter are detailed as follows:

During the Relevant Period AIXE entered 29 Bids for CES on behalf of its client (the 'CES Bids'). Of the CES Bids:

- 29 were for a small volume/value compared to the average volume/value per CES trade on that day;
- 29 resulted in the execution of trades that established significant price increases during the Relevant Period;
- 22 resulted in transactions that established closing prices for the day; and
- 14 resulted in an AIXE alert and manual entry by a Designated Trading Representative ('DTR') into the Trading Platform.

The Tribunal found that AIXE failed to:

- put in place adequate arrangements to prevent trading by the client that might interfere with the integrity of the equities market operated by ASX;
- adequately train, advise, inform, or otherwise ensure that, in respect of trading by the client, its DTRs would not submit Trading Messages that might interfere with the integrity of the equities market that ASX operates;
- respond quickly and/or adequately to the Automated Ordering Process ('AOP') alerts generated;
- query the client at the time about the Orders for CES; and
- prevent the continued submission of Trading Messages in respect of the CES Orders entered by the client with similar characteristics or to query or cancel Orders already entered until it took preventative measures on 16 July 2007.

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

- (a) the circumstances and seriousness of the contravention;
- (b) the disciplinary history of AIEX;
- (c) AIEX fully co-operated with ASX in relation to the conduct of its investigation into the matter;
- (d) AIEX agreed at an early stage not to contest the contravention, thereby saving time and costs;
- (e) Commonwealth Securities Limited acquired AIEX on 26 November 2007, which was subsequent to the Relevant Period. The directors and senior management of AIEX during the Relevant Period are not current directors or senior managers of AIEX. Accordingly, while at the time of the contravention, AIEX did not have appropriate controls in place to ensure compliance with the relevant rules, AIEX has placed evidence before the Tribunal which now demonstrates a corporate culture conducive to compliance with the Rules;
- (f) AIEX has taken significant remedial action to prevent a recurrence of the contravention including providing ongoing training to its DTRs in conjunction with implementing a robust post trade monitoring system;
- (g) the misconduct occurred over an extended period of time; and
- (h) the misconduct 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 prior to 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal had close regard to the sanction guidelines (Guidance Note 18 to the ASX Market Rules) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines, the Tribunal determined that the contravention be 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 of the contravention, and is satisfied that a total fine of \$50,000 (plus GST) represents an appropriate sanction in the circumstances.

*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.