

**ASX Circular****Date:** 22 February 2011**Key topics**

1. Macquarie Equities Limited

**Reading List**

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

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any inaccuracies contained in the  
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**DISCIPLINARY MATTERS**

The ASX Disciplinary Tribunal (the 'Tribunal') has determined the following:

Macquarie Equities Limited ('MEL') contravened ASX Market Rule 13.4.1(b)(iii) in that between 19 November 2008 and 24 November 2008 it entered 14 Asks for a security (the 'Security') into the ASX Trading Platform where MEL ought reasonably to have suspected that its client (the 'Client') had placed the orders with the intention of creating a false and misleading appearance for the price of the Security.

MEL's awareness of the attempt to minimise the exercise price of options that the Client had obtained pursuant to an options contract should have arisen at least by the close of trading on 20 November 2008, after certain details of the options contract had been announced over the ASX Company Announcements Platform prior to the commencement of trade on 20 November 2008 (the 'Options Announcement').

This conclusion took into account the circumstances of each of the orders, and the factors set out in Market Rule 13.4.2 to which MEL was required to have regard.

For this contravention the Tribunal imposed a total fine of \$100,000 (plus GST).

The circumstances of the matter are detailed as follows:

This matter involved trading by MEL in relation to the Security on 19 November 2008, 20 November 2008, 21 November 2008, and 24 November 2008. On these dates MEL, on behalf of the Client made a series of Asks in relation to orders placed by the Client by telephone.

The Options Announcement stipulated that the Client had purchased 20,000,000 Options in the Security, and advised that the allotment price the Client was to pay for the Security upon exercise of the options was based on a 20 percent discount to the average market price for the Security for the previous five days prior to exercise. The Options Announcement was not marked price sensitive and was not seen by relevant MEL personnel. MEL was not aware of any improper motive on the part of the Client.

However, MEL ought reasonably to have suspected, at least by the close of trading on 20 November 2008, that its Client may have placed the orders with the intention of creating a false and misleading appearance with respect to the price of the Security because:

- each order was placed by the Client in the last 20 minutes of trading (with the exception of the orders to cancel, see below);
- the Client cancelled residual Asks before the commencement of trade on 20 November 2008 (and continued to do so on 21 and 24 November 2008);
- MEL received non-standard alerts on 19 and 20 November 2008;
- MEL received Compliance Explorer alerts triggered by the transactions on 19 November 2008 and 20 November 2008;
- each Ask on 19 November 2008 and 20 November 2008 was submitted by MEL Designated Trading Representatives ('DTR');
- each order on 19 November 2008 and 20 November 2008, including the order to cancel, was received by the one MEL adviser; and
- the Options Announcement had been released prior to the commencement of trading on 20 November 2008, and should have alerted MEL to the existence of a relevant circumstance under ASX Market Rule 13.4.2.

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

- (a) MEL fully assisted and cooperated with ASX in its investigation;
- (b) MEL agreed not to contest the Contravention;
- (c) MEL DTRs reviewed the orders and authorised them to be entered into the Trading Platform;
- (d) the remedial measures MEL has advised it has taken to prevent recurrence of the misconduct including introducing an improved procedure for reviewing Compliance Explorer Alerts and formalising requirements for advisers and DTRs when reviewing trading;
- (e) the misconduct was not systemic or indicative of a pattern of non compliance with the Rules;
- (f) the disciplinary history of MEL, having had eight previous unrelated ASX Disciplinary Tribunal findings against it;
- (g) the misconduct was negligent;
- (h) the misconduct had the potential to result in loss to other parties; and
- (i) the misconduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates.

#### Annexure A - Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, the Tribunal has had regard to the Disciplinary Tribunal Sanction Guidelines which are Annexure A to the Disciplinary Appeals and Processes Rulebook.

The Tribunal has determined that the particular circumstances with respect to this matter warrant its categorisation as a level 2 Serious Contravention (rather than a level 3 Very Serious Contravention) for which the applicable penalty range is \$20,000 - \$100,000 (plus GST). Those circumstances include that the misconduct was not intentional or knowingly deceptive.

Given the aggravating and mitigating circumstances in this matter the Tribunal determined that a fine of \$100,000 (plus GST) represents an appropriate sanction.

The Tribunal's opinion is that this sanction will serve as a deterrent to this participant and other participants 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.