



ASX Circular

Date: 15 March 2011

Key topics

1. Commonwealth Securities Limited

Reading List

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

Contact

Cigdem Kocak

Telephone

(02) 9227 0112

ASX Limited
 ABN 98 008 624 691
 Exchange Centre
 20 Bridge Street
 Sydney NSW 2000
 PO Box H224
 Australia Square NSW 1215

Internet: <http://www.asx.com.au>

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DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal (the 'Tribunal') has imposed a total fine of \$45,000 (plus GST) on Commonwealth Securities Limited ('CommSec') for failing to prevent actions that interfered with the efficiency and integrity of the market.

The Tribunal determined the following:

CommSec contravened the following ASX Market Rules*, between 2 November 2007 and 16 January 2008 (the 'Relevant Period'), in relation to trading in the fully paid ordinary shares of Mikoh Corporation Limited ('MIK') by two different clients (the 'Clients'):

- a) ASX Market Rule 13.1.5(a)(i), and thereby ASX Market Rule 13.1.4(a), by failing to have and maintain the necessary organisational and/or technical resources in place to ensure that the Trading Messages it submitted in respect of seven Orders, entered by its Clients and considered by its Designated Trading Representatives ('DTRs') (the 'Manual Orders'), did not interfere with the efficiency and integrity of the market in respect of MIK ('Contravention 1');
- b) ASX Market Rule 13.3.1(a), by failing to comply with the Operational Requirements in relation to Automated Order Processing, so as to have and maintain the necessary organisational and/or technical resources (including appropriate automated filters) to ensure that the Trading Messages submitted through its Automated Order Processing ('AOP') system in respect of 24 Orders entered by the Clients (the 'AOP Orders') did not interfere with the efficiency and integrity of the market in respect of MIK ('Contravention 2'); and
- c) ASX Market Rule 13.3.1(b), by failing, in respect of the AOP Orders, to ensure that its AOP system did not interfere with the efficiency and integrity of the market in respect of MIK ('Contravention 3').

CommSec did not contest the contraventions before the Tribunal.

The following are the circumstances of the matter:

1. During the Relevant Period, CommSec executed a total of 78 purchase transactions on behalf of its Clients.
2. The submission of Trading Messages associated with the seven Manual Orders and the 24 AOP Orders (together, the 'Relevant Orders') interfered with the efficiency and integrity of the market in MIK in the following manner:
 - 2.1. each Relevant Order had a material impact on the price of and/or the market for MIK;

- 2.2. where there was more than one Relevant Order on a given day, the impact on the price of and/or the market for MIK was particularly significant;
 - 2.3. the post-transaction price of MIK, in particular following the second and subsequent transactions where there was more than one Relevant Order on a given day, did not accurately reflect genuine demand for MIK; and
 - 2.4. persons observing the market in MIK or wishing to invest in MIK could not have been confident that the post-transaction prices of MIK were a genuine reflection of supply, demand and information.
3. In respect of the Manual Orders, CommSec contravened ASX Market Rules 13.1.5(a)(i) and 13.1.4(a) in that:
- 3.1. it failed to put in place adequate arrangements to prevent trading by the Clients that potentially interfered with the efficiency and integrity of the market in MIK;
 - 3.2. it failed to adequately ensure that its DTRs and other personnel would not submit, or allow to be submitted on to the Trading Platform, Trading Messages in respect of orders by the Clients that might interfere with the efficiency and integrity of the equities market in respect of MIK;
 - 3.3. it failed to adequately ensure that its DTRs and other personnel could identify circumstances where a combination of orders by the Clients, entered on the same day, could or would, when taken to together, interfere with the efficiency and integrity of the market in respect of MIK;
 - 3.4. through its DTRs, it submitted, or allowed to be submitted on to the Trading Platform, Trading Messages that interfered with the efficiency and integrity of the market in respect of MIK; and
 - 3.5. it failed to act, during the course of the Relevant Period, by reviewing or modifying its relevant organisational and/or technical resources, when it knew, or ought to have known, that the trading by the Clients had interfered with the efficiency and integrity of the market in respect of MIK.
4. In respect of the AOP Orders, CommSec contravened ASX Market Rule 13.3.1(a) and 13.3.1(b) in that:
- 4.1. it failed to put in place adequate arrangements to prevent trading by the Clients through its AOP system that potentially interfered with the efficiency and integrity of market in respect of MIK;
 - 4.2. it failed to adequately ensure that its automated filters or other technical and/or organisational resources would identify orders by the Clients, which could or would interfere with the efficiency and integrity of the market in respect of MIK;
 - 4.3. it failed to adequately ensure that its automated filters or other technical and/or organisational resources could identify circumstances where a combination of orders by the Clients entered on the same day could or would, when take to together, interfere with the efficiency and integrity of the equities market in respect of MIK;
 - 4.4. through its AOP system submitted, or allowed to be submitted on to the Trading Platform, Trading Messages that interfered with the efficiency and integrity of the market in respect of MIK; and
 - 4.5. it failed to act, during the course of the Relevant Period, by reviewing or modifying its relevant organisational and/or technical resources, when it knew, or ought to have known, that the trading by the Clients had interfered with the efficiency and integrity of the market in respect of MIK.

- (i) the efficiency and integrity of a market refers to the ability of investors to transact in a fair and informed market where prices reflect genuine supply, demand and information;
- (ii) CommSec fully co-operated with ASX in relation to the conduct of its investigation into the matter;
- (iii) CommSec agreed at an early stage not to contest the Contraventions, thereby saving time and costs;
- (iv) the significant remedial action taken by CommSec to prevent a recurrence of the contraventions. CommSec advised that it has established a system of ongoing training of its DTRs and a robust post-trade monitoring system, which means that trading strategies that might affect the integrity of the market for a security will be quickly detected and appropriate action taken to ensure the trading ceases;
- (v) the disciplinary history of CommSec is an aggravating factor, in that CommSec had been sanctioned by the Disciplinary Tribunal on six occasions since 2002. However, there have been no other determinations by the Tribunal involving CommSec and a contravention of ASX Market Rules 13.1.5, 13.1.4 or 13.3.1;
- (vi) the contravening conduct occurred for over two months;
- (vii) the relevant misconduct was systemic – involving CommSec’s filters and manually entered orders; and
- (viii) 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 before 31 March 2008, the Tribunal had regard to the Sanction Guidelines in ASX Market Rules Guidance Note 18, as in force during the period 1 August 2005 to 30 March 2008, in making its determination as to sanction in this matter.

Taking into account the mitigating and aggravating circumstances in this matter, the Tribunal determined that a fine of \$45,000 (plus GST) is an appropriate overall sanction. The Tribunal categorised all three Contraventions as Level 2 – Serious Contraventions, for which the applicable penalty range is \$20,000 - \$100,000 (plus GST).

The Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and Market Participants in maintaining a market that is fair, orderly and transparent.

* 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. 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. 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.