



ASX Circular

Date: 6 April 2010

Key topics

1. Merrill Lynch Equities (Australia) 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 the following:

Merrill Lynch Equities (Australia) Limited ('MLEA') contravened the following ASX Market Rules:

Contraventions 1, 2 and 4 - ASX Market Rule 14.1.1

On three occasions between 24 September 2008 and 3 December 2008 MLEA entered Orders that resulted in markets for Products that were not both fair and orderly. For these contraventions the Tribunal imposed a penalty of \$80,000 (plus GST).

Contravention 3 – ASX Market Rule 14.1.1

On 20 October 2008 an employee of MLEA who was not a Designated Trading representative ('DTR') authorised the entry of an order that resulted in market that was not both fair and orderly.

For this contravention the Tribunal imposed a penalty of \$35,000 (plus GST).

Contravention 5 - ASX Market Rule 13.2.2

On 20 October 2008 an employee of MLEA who was not a DTR submitted a Trading Message into the Trading Platform.

For this contravention the Tribunal imposed a penalty of \$55,000 (plus GST).

The Tribunal imposed a total fine of \$170,000 (plus GST) and required the implementation of a training program for relevant MLEA employees to raise awareness of and compliance with ASX Market Rule 14.1.1.

MLEA did not contest the matter before the Tribunal.

The circumstances of the matter are detailed as follows:

Contravention 1

On 24 September 2008 a DTR entered an Ask into the Trading Platform for 250,008 fully paid ordinary shares in Tabcorp Holdings Limited ('TAH') at \$0.001 ('the TAH Ask').

The DTR entered the TAH Ask notwithstanding that immediately prior to its entry the Bid/Ask/Last for TAH was \$8.01/\$8.02/\$8.01. The DTR received a warning message that the order was greater than 5% from current market.

The TAH Ask traded immediately in 107 Market Transactions, resulting in a market for TAH that was not both fair and orderly in that the Market Transactions resulting from the TAH Ask caused the last price of TAH to fall from \$8.01 to \$5.90, a total of \$2.11 (26.34%). MLEA subsequently deleted the residual Ask of 9,647 TAH.

Pursuant to a request from MLEA to cancel the Market Transactions resulting from the TAH Ask, the ASX Dispute Governors Committee convened and ordered the cancellation of all Market Transactions in TAH that traded at \$7.65 and below - a total of 70 transactions.

Contravention 2

On 6 October 2008 MLEA received an Order from an overseas client to buy 9,700,300 Telstra Corporation Limited ('TLS'). The Order was worked manually until approximately 12:50:00.

At 12:53:15 an MLEA DTR (the same DTR responsible for Contravention 1) sought to allocate the balance of the Order to an algorithmic trading engine. As there was an outdated version of MLEA's trading system installed on the DTR's computer, the balance of the Order was not allocated to the algorithmic trading engine. Instead the balance of the Order was entered into the Trading Platform as an 'at market' Bid for 8,349,799 TLS ('the TLS Bid').

Immediately prior to the entry of the TLS Bid into the Trading Platform the Bid/Ask/Last for TLS was \$4.31/\$4.32/\$4.32. The TLS Bid traded immediately in 853 Market Transactions with the entire TLS Ask schedule, resulting in a market for TLS that was not both fair and orderly, in that the Market Transactions resulting from the TLS Bid caused the last price of TLS to rise from \$4.32 to \$5.40, a total of \$1.08 (25%) and leaving a residual Bid of 2,289,952 TLS.

Pursuant to a request from MLEA to cancel the Market Transactions resulting from the TLS Bid, the ASX Dispute Governors Committee convened and ordered the cancellation of all Market Transactions in TLS that traded at 12:53 at \$4.50 and above - a total of 577 transactions.

Contravention 4

On 3 December 2008 a MLEA DTR (the same DTR responsible for Contraventions 1 and 2) entered an Ask for 100,001 Orica Limited ('ORI') at \$5.60 ('the ORI Ask').

The DTR entered the ORI Ask notwithstanding that immediately prior to its entry into the Trading Platform the Bid/Ask/Last for ORI was \$15.57/\$15.60/\$15.59.

The ORI Ask traded immediately and in full in 107 Market Transactions, resulting in a market for ORI that was not both fair and orderly in that the Market Transactions caused the last price of ORI to fall from \$15.59 to \$5.60, a total of \$9.99 (64.08%).

Pursuant to a request from MLEA at 15:16 to cancel "all possible" Market Transactions resulting from the ORI Ask, the ASX Dispute Governors Committee convened and ordered the cancellation of all Market Transactions in ORI that traded at \$14.97 and below - a total of 86 transactions.

Contraventions 3 and 5

On 20 October 2008 a Direct Market Access client of MLEA submitted an Ask for 100,000 Newcrest Mining Limited ('NCM') at \$0.26 ('the NCM Ask'). As the NCM Ask was at a price substantially outside the prevailing market in NCM it was diverted to a DTR for authorisation.

An MLEA employee, who was not a DTR, authorised the entry of the NCM Ask. The NCM Ask was entered into the Trading Platform notwithstanding that immediately prior to its entry the Bid/Ask/Last for NCM was \$22.42/\$22.50/\$22.49 and an internal warning message was generated stating 'Order price is 2397 away from price step limit and 98.84% away from the last price'.

The authorisation and entry of the NCM Ask into the Trading Platform resulted in a market for NCM not being both fair and orderly in that the NCM Ask traded immediately and in full in 119 Market Transactions and the resulting Market Transactions caused the last price of NCM to fall from \$22.49 to \$18.55, a total of \$3.94 (17.52%).

Pursuant to a request from MLEA to cancel the Market Transactions resulting from the NCM Ask, the ASX Dispute Governors Committee convened and ordered the cancellation of all Market Transactions in NCM that traded at \$21.65 and below - a total of 116 transactions.

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

- a) MLEA cooperated with ASX in relation to the conduct of its investigation into the contraventions;
- b) MLEA agreed at an early stage not to contest the contraventions thereby saving time and costs;
- c) MLEA self-reported the misconduct in a timely manner;
- d) The disciplinary history of MLEA (including that the contravention of Rule 13.2.2 is a repeat contravention);

- e) The misconduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates;
- f) The fact that three breaches of Market Rule 14.1.1 were caused by the actions of the same employee within a short period of time;
- g) MLEA took disciplinary action against the relevant employee involved in Contraventions 1, 2 and 4 and ultimately his employment was terminated;
- h) The misconduct the subject of Contravention 5 was negligent and represents a serious compliance breakdown; and
- i) MLEA took disciplinary action against the relevant employee involved in Contraventions 3 and 5 and took immediate steps to ensure the contravention did not occur again.

The Tribunal noted:

The importance of the strict obligation imposed on Market Participants by ASX Market Rule 14.1.1, which requires that Participants do not do anything that results in a market for a Product that is not both fair and orderly.

The entry of the orders had a considerable impact on the market for the relevant Products and necessitated the involvement of the Dispute Governors Committee which led to a number of trade cancellations. The breaches of ASX Market Rule 14.1.1 in Contraventions 1, 2 and 4 resulted from the actions of a single employee and occurred within a short period of time. The misconduct was, however, inadvertent and the result of genuine mistakes by the employee.

The Tribunal is strongly of the view that the entering of Trading Messages into the Trading Platform by DTRs is a critical and important measure for maintaining the integrity of the market and maintaining a fair, orderly and transparent market.

Contravention 3 highlights the importance of the role of DTRs in authorising trading. The seriousness of the misconduct in Contravention 3 is accentuated by the fact that the person involved was not registered as a DTR in accordance with the Rules.

Annexure A - Disciplinary Tribunal Sanction Guidelines

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

The Tribunal determined that these contraventions are Level 2 Serious Contraventions, for which the applicable penalty range is \$20,000 - \$100,000 (plus GST). Given the aggravating and mitigating circumstances in this matter the Tribunal determined that the following fines represent an appropriate sanction:

- Contraventions 1, 2 and 4: \$80,000 (plus GST);
- Contravention 3: \$35,000 (plus GST); and
- Contravention 5: \$55,000 (plus GST);

Total: \$170,000 (plus GST)

The Tribunal has also ordered that within three months of the date of the determination of this matter, MLEA will implement a training program for relevant MLEA employees to raise awareness of and compliance with ASX Market Rule 14.1.1. The content of the program will be agreed with ASX Compliance.

An important function of the ASX and the Market Rules is to maintain the reputation and integrity of the market. The Tribunal is satisfied that the imposition of this sanction appropriately serves the purposes of protecting the interests of ASX and its participating organisations, and of promoting confidence in the integrity of the markets. This sanction will serve as a deterrent to MLEA and other participants from engaging in similar misconduct.