



ASX Circular

Date: 25 May 2010

Key topics

1. Hartleys Limited

Reading List

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

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DISCIPLINARY MATTERS

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

Hartleys Limited ('Hartleys') contravened ASX Market Rule 13.4.1(b)(iii) in that it made a bid for and dealt in the ordinary fully paid shares of Broad Investments Limited ('BRO') where, taking into account the circumstances of the order, Hartleys ought reasonably to have suspected that the order may have been placed with the intention of creating a false or misleading appearance with respect to the price of BRO.

Hartleys did not contest the contravention before the Tribunal.

For this contravention the Tribunal imposed a fine of \$80,000 (plus GST).

Circumstances of the contravention

In early 2008 Opes Prime went into voluntary administration and subsequently went into liquidation on 15 October 2008. Through a series of creditors meetings and court hearings, it was resolved that the value of claims by certain creditors of Opes Prime would be determined by reference to the closing price of their securities with Opes Prime as at the close of trading on 16 October 2008.

On 14 October 2008 ASX wrote to Market Participants by way of Circular 512/08, stating:

"There are up to 1,000 securities listed on ASX which may affect the interests of Opes Prime clients. Many of them are relatively illiquid and, as such, are susceptible to market manipulation. A list of the securities is attached (Attached List).

ASX requests Market Participants to be alert to any orders placed near the close on 16 October 2008 which will increase the price of any of the securities on the Attached List when executed. A Market Participant which receives such orders should consider whether the client is seeking to fix a higher closing price for that day.

Market Participants should be particularly alert to small volume, small value buy Orders which, when executed will increase the price of any of the Products in the Attached List on 16 October 2008. If Market Participants receive such unusual orders near the close on 16 October 2008, they should consider specifically querying their client as to whether they have an interest in a higher closing price in the relevant [securities]".

The Attached List contained 991 securities, one of which was BRO.

At approximately 16:04 on 16 October 2008, during the closing single price auction, a client of Hartleys placed a Bid for 1,000,000 BRO at up to \$0.002. Shortly thereafter, following consideration of the Bid by a Hartleys Designated Trading Representative, Hartleys placed the order in the market at \$0.002. Immediately prior to Hartleys placing the Bid, the market for BRO was \$0.001/\$0.002/\$0.001 (Bid/Ask/Last). The last sale price for BRO was \$0.001.

At 16:10:25 in the CSPA the Bid matched with relevant Offers, resulting in a market transaction for 1,000,000 BRO at \$0.002. The effect of this transaction was that the closing price of BRO was \$0.002, compared with the previous last sale price of \$0.001 (an increase of 100%).

Although Hartleys contended that it did not suspect that the client had placed the Bid with any intention of manipulating the market, the Tribunal determined that the circumstances were such that Hartleys ought reasonably have suspected that the client may have placed the Bid with such an intention and should not have placed the Bid without further enquiry to ascertain the client's intention.

For this contravention the Tribunal imposed a total fine of \$80,000 (plus GST).

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

- a) Hartleys cooperated with ASX in relation to the conduct of its investigation into the contravention;
- b) Hartleys agreed not to contest the contravention;
- c) The disciplinary history of Hartleys, noting that this was the first time Hartleys had been subject to disciplinary action;
- d) The misconduct was a one-off isolated incident;
- e) The misconduct was not systemic or indicative of a pattern of non-compliance with the Rules; and
- f) 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 the fact that the conduct involved trading in one stock on one day and in circumstances where the relevant bid was placed the minimum price increment above the then best bid and last sale price. However in light of Circular 512/08 issued by ASX, Hartleys ought to have been alert to trading in BRO on the relevant day in question and so ought reasonably to have suspected that the order may have been placed with the intention of creating a false or misleading appearance with respect to the price of BRO.

Given the aggravating and mitigating circumstances in this matter the Tribunal determined that a fine of \$80,000 (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.