



ASX Circular

Date: 7 June 2010

Key topics

1. IMC Pacific Pty 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:

IMC Pacific Pty Limited ('IMC') contravened the following ASX Market Rules:

Contravention 1: ASX Market Rule 13.4.1(a)(ii)

IMC made Bids and/or Offers for and/or or dealt in Products as Principal where those Bids, Offers or dealings are deemed, under Section 1041B(2) of the Corporations Act (Cth), to have created a false or misleading appearance of active trading in those Products and/or with respect to the market for, and/or the price of, such Products, because the resulting transactions did not involve a change in beneficial ownership (NCBO transactions).

Contravention 2: ASX Market Rule 13.3.1

IMC failed to have and maintain the necessary organisational and technical resources, including automated filters in relation to Automated Order Processing (as defined in the Rules), to ensure:

- i. Trading Messages submitted by it did not interfere with the efficiency and integrity of the ASX market and/or the proper functioning of a Trading Platform; and
- ii. Compliance at all times with the Rules, including the prohibition on NCBO transactions in Market Rule 13.4.1(a)(ii).

IMC did not contest the contraventions before the Tribunal.

For these contraventions the Tribunal imposed a fine of \$85,000 (plus GST).

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

- a) The circumstances of the contravention;
- b) IMC's full cooperation with ASX Investigations in the investigation of the matter;
- c) IMC's agreement not to contest the matter;
- d) The misconduct was unintentional;
- e) IMC's disciplinary history;
- f) The misconduct occurred over an extended period of time (six and a half months);
- g) IMC placed reasonable reliance on external legal advice in dealing with this issue when first raised by ASX;
- h) No party suffered loss or damage as a result of the transactions;
- i) The relevant conduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates;
- j) The steps taken by IMC to minimise the chances of such an event recurring, including the development and deployment of special purpose filters directed to identifying and preventing NCBO transactions; and
- k) The need for the disciplinary sanction to be remedial, to serve as a deterrent to any future misconduct by IMC and as a deterrent to all other regulated persons from engaging in the same or similar conduct.

The circumstances of this matter are detailed as follows:

Contravention 1

Between 1 February 2007 and 14 September 2007 (the 'Relevant Period') IMC contravened ASX Market Rule 13.4.1(a)(ii) by entering into 9,705 Market Transactions on the Trading Platform in respect of which IMC, as Principal, was both buyer and seller. The Market Transactions resulted in no change in the beneficial ownership of the Products (that is, NCBO transactions).

These NCBO transactions occurred between independent trading strategies operated by IMC and included transactions between its options market making operations and its algorithmic trading operations. The NCBO transactions were not entered for the purpose or with the intent of affecting the market price or trading volumes of the relevant securities.

Contravention 2

During the Relevant Period, IMC contravened ASX Market Rule 13.3.1 in that the filters it operated were inappropriate as they were incapable of preventing:

- a) Bids and Offers entered by IMC from matching with each other; and/or
- b) Market Transactions occurring:
 - i. in which IMC was both buyer and seller; and
 - ii. which involved no change in beneficial ownership; and
 - iii. which had, or were likely to have, the effect of creating a false or misleading appearance of active trading and/or with respect to the price of, or market for Products traded on the Market.

Disciplinary Tribunal Sanction Guidelines

The misconduct occurred before 31 March 2008, therefore the applicable Tribunal sanction guidelines are those contained in ASX Market Rules Guidance Note 18 which was in effect at the material time.

The Tribunal determined that the particular circumstances with respect to Contravention 1 support its categorisation as a Level 2 Serious Contravention for which the applicable penalty range is \$20,000 - \$100,000 (plus GST). Those circumstances include the fact that the conduct involved NCBO trading which is deemed under Section 1041B(2) of the Corporations Law (Cth), to have created a false or misleading appearance of active trading in the products.

The misconduct the subject of Contravention 2 occurred as a result of the same set of factual circumstances as Contravention 1. In the Tribunal's view it is appropriate to impose a single aggregate penalty for Contraventions 1 and 2 under the totality principle.

Taking into account the mitigating and aggravating circumstances in this matter, the Tribunal determined that a fine of \$85,000 (plus GST) was an appropriate overall sanction.

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 fine will act as a deterrent and appropriately serves the purposes of protecting the interests of ASX and its participating organisations, and of promoting confidence in the integrity of the markets.