



ASX Circular

Date: 22 June 2010

Key topics

1. Morgan Stanley Australia Securities 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 has determined the following:

Morgan Stanley Australia Securities Limited ('MSASL') contravened ASX Market Rule 13.2.2 between 7 May and 28 May 2008 (the 'Relevant Period') by allowing trading by persons not registered with the ASX as Designated Trading Representatives ('DTRs').

MSASL did not contest the contravention before the Tribunal.

For the contravention the Tribunal imposed a fine of \$20,000 (plus GST).

The circumstances of this matter are detailed as follows:

- During the Relevant Period, 265 Orders were flagged by MSASL's certified Automated Order Processing system (AOP system). These orders were held until they could be reviewed by a DTR.
- Of these 265 Orders, 80 Orders were released through to the Trading Platform by DTRs, while the remaining 185 Orders were released by three non-DTRs. The three non-DTRs were not operating in Australia.
- MSASL self-reported to ASX Markets Supervision Pty Limited (ASX) that three non-DTRs had released Orders into the Trading Platform through its AOP system.
- MSASL explained, in a letter to ASX, that the breach was caused by an inappropriate setting on its AOP system. The traders did not realise that the held orders were being released directly into the market.
- The issue was discovered by MSASL's IT department in May 2008. The problem was rectified immediately, and the ability of the three non-DTRs to release Orders directly into the market was removed.
- MSASL reported to ASX that it conducted a series of internal reviews of its engines and systems. The reviews were completed and highlighted no issues of concern.

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

- a) Disciplinary history – This matter is MSASL's first contravention in ten years as a Participant;
- b) Self-reported – MSASL self-reported the contravention to ASX in a timely manner and fully cooperated with ASX in its investigation. In these circumstances this indicated a strong culture of compliance at MSASL;
- c) Unintentional/Inadvertent/Accidental – The breach was unintentional in that it occurred as a result of an incorrect system setting arising from a misunderstanding on the part of the IT developer;

- d) Action taken to remedy contravention – MSASL took prompt and immediate action to rectify the incorrect settings and to remove the ability of the non-DTRs to release orders into the market. MSASL put in place a remediation plan, which included an internal review of MSASL's current AOP systems. It also developed a corporate governance process with respect to the certification of new AOP systems;
- e) There was no damage or loss to any third party;
- f) The misconduct involved three non-DTRs who were responsible for releasing a total of 185 Orders over a period of 13 trading days; and
- g) The breach is indicative of inadequate operational controls.

Disciplinary Tribunal Sanction Guidelines

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

The Tribunal determined that the particular circumstances with respect to this matter warrant its categorisation as a level 2 Serious Contravention for which the applicable penalty range is \$20,000 - \$100,000 (plus GST).

The DTR provisions are important in ensuring that only appropriately registered persons enter orders into the trading platform. Despite the submissions from MSASL regarding the relevant qualifications of the traders involved in this matter, the requirement to be registered as a DTR is important in maintaining the integrity of the markets.

Given the aggravating and mitigating circumstances in this matter the Tribunal determined that a fine of \$20,000 (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. The sanction also appropriately serves the interests of ASX and market participants by supporting the integrity of the ASX markets.