



## ASX Circular

Date: 29 June 2011

## Key topics

1. Macquarie Bank 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 imposed a total fine of \$40,000 (plus GST) on Macquarie Bank Limited ('MBL') for the contraventions of the following Operating Rules of the Sydney Futures Exchange ('SFE Operating Rules') by the representative of MBL's Client, an affiliate of MBL ('MBL's Client'):

- a) Rule 3.1.13 by arranging the details of potential trades between two or more parties without the market being made aware of all relevant details of the potential trade, and not in a manner specifically permitted under the SFE Operating Rules ('Contravention 1'); and
- b) Rule 3.1.14 by executing trades with the intent to exclude other Participants or their Representatives ('Contravention 2').

The Tribunal has determined that MBL is responsible and therefore liable for these two contraventions pursuant to SFE Operating Rule 2.2.13(b)(i) which states:

Any Full Participant who has permitted its client to connect through a Terminal shall be responsible for any orders entered through its Terminal by the Client.

The contravening conduct occurred on 29 December 2009. The Relevant Product was the March 2010 SFE SPI200™ Index Futures contract (APH0) ('the SPI Options').

MBL did not contest the contraventions before the Tribunal.

The Circumstances of the matter are detailed as follows:

In a telephone conversation that commenced at 11:53:00, MBL's Client contacted Mr XX, the Representative of another Participant's client, and expressed interest in the SPI options, requesting prices in a number of March spreads, all for 89 lots. Mr XX quoted the following:

- 4250/4500 spread, 28/34;
- 4400/4550 spread, 22/28; and
- 5000/5200 spread, 52/58.

In a telephone conversation that commenced at 12:04:00, MBL's Client informed Mr XX that he wanted to trade the following spread options contracts.

- Buy 89 APH0 5000 calls and sell 89 APH0 5200 calls at a 57 point spread;
- Buy 89 APH0 4250 puts and sell 89 APH0 4500 puts at a 29 point spread; and
- Buy 89 APH0 4400 puts and sell 89 APH0 4550 puts at a 23 point spread.

Mr XX stated that he would place opposing orders in the above contracts.

In a telephone conversation that commenced at 12:14:00 Mr XX contacted an alternative Representative of MBL's client, and stated that MBL's Client was '...looking at doing three different spreads eighty nine times each. I'm just calling him back with prices I'm going to be putting into the screen'.

A further telephone conversation commenced at 12:24:00 between MBL's Client and Mr XX. During the conversation Mr XX advised MBL's Client of the prices at which he would trade the option spreads. Once the agreed price for each contract was confirmed, Mr XX placed each leg of the spread as separate outright orders into the market and MBL's Client subsequently placed opposing orders resulting in six separate deals.

#### Contravention 1

In the circumstances, MBL's Client's conduct contravened SFE Operating Rule 3.1.13 (Pre-arrangement) in that it involved arranging with another party the details of the relevant trades, when the market was not made aware of any details of the relevant trades and when there was no permission under the Operating Rules for so arranging those trades.

#### Contravention 2

In the circumstances, MBL's Client's conduct contravened SFE Operating Rule 3.1.14 (Trading to the Exclusion of Others) in that it executed the relevant trades with the intent to exclude other Participants or their Representatives.

In determining penalty, the Tribunal, took into account a number of factors, including the following:

- a) the disciplinary history of MBL;
- b) MBL's Client was an affiliate of MBL;
- c) MBL assisted and cooperated with ASX in its investigation;
- d) the measures MBL took to satisfy itself that MBL's Client had the appropriate skills, facilities and procedures to operate a connection to MBL's SFE Terminal in compliance with its obligations under SFE Operating Rule 2.2.13(c) (albeit that those measure did not prevent the contravention in this case);
- e) MBL has advised that it has taken steps to prevent a recurrence of the misconduct;
- f) the misconduct was intentional on the part of MBL's Client;
- g) the misconduct was not self-reported; and
- h) the misconduct 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 after 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal was bound by the sanction guidelines (Annexure A to the Rulebook) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the two contraventions of the SFE Operating Rules were appropriately classified as Level 2 (Serious Contraventions), for which the applicable penalty range is \$20,000 - \$100,000 (plus GST).

The Tribunal considered the aggravating and the mitigating circumstances in each contravention, and imposed the fine as outlined above. The Tribunal considers that the total fine of \$40,000 (plus GST) represents an appropriate sanction in the circumstances.

\* 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.