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ASX
AUSTRALIAN SECURITIES EXCHANGE

ASX Circular

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Key topics

1. Timber Hill Pty Limited

Reading List

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

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DISCIPLINARY MATTERS

The Appeal Tribunal has dismissed an appeal by Timber Hill Pty Limited ('Timber Hill') against the determination of the Disciplinary Tribunal*. Timber Hill appealed the quantum of the fine imposed in respect of three of the following five contraventions.

The result of the appeal is that the total sanction imposed by the Disciplinary Tribunal of $100,000 (plus GST) remains unchanged.

Disciplinary Tribunal determination:

Timber Hill contravened ASX Market Rule 14.1.1** in respect of the following orders it entered into the Trading Platform:

Contravention 1

On 16 April 2008 Timber Hill entered an 'at market' Ask for 187,629 fully paid ordinary shares of Amcor Limited ('AMC') on behalf of its client, which immediately traded with the entire Bid Schedule in 49 Market Transactions, causing the last price to fall from $6.75 to $5.61 (a 17.25% decrease).

Contravention 2

On 7 August 2008 Timber Hill entered an 'at market' Ask for 10,000 fully paid ordinary shares of Eden Energy Limited ('EDE') on behalf of its client, which traded immediately in two Market Transactions, causing the last price to fall from $0.15 to $0.05 (a 66.67% decrease).

Contravention 3

On 7 August 2008 Timber Hill entered an 'at market' Bid for 50,000 fully paid ordinary shares of Sunset Energy Limited ('SEY') on behalf of its client, which traded immediately in four Market Transactions, causing the price to rise from $0.20 to $0.30 (a 50% increase).

Contravention 4

On 30 September 2008 Timber Hill entered three 'at market' Asks for fully paid ordinary shares of Rusina Mining NL ('RML') on behalf of its client. Market Transactions resulting from the RML Asks caused the price to fall from $0.085 to $0.010 (a 88.2% decrease).

Contravention 5

On 31 October 2008 Timber Hill entered an amended Ask for 100 fully paid ordinary shares of International Goldfields Limited ('IGC') at $0.105, which traded immediately, causing the price to fall from $0.200 to $0.105 (a 47.5% decrease).

See Attachment A for full details of the contraventions.

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.

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

a) Timber Hill self-reported the conduct in a timely manner;
b) Timber Hill did not contest the contraventions;
c) Timber Hill has no previous disciplinary history before the Tribunal;
d) The misconduct was unintentional;
e) The misconduct did not result in loss or injury to third parties;
f) Timber Hill advised it has taken necessary remedial steps regarding its ACOP filters to prevent future contraventions arising in similar circumstances;
g) The orders in Contraventions 1 and 4 necessitated the involvement of ASX in cancelling trades;
h) The relative illiquidity of the securities lessened the overall impact of the contravening conduct and limited the extent of the disorderly markets; and
i) The misconduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates.

Given the aggravating and mitigating circumstances in this matter the Tribunal determined that the following fines represent an appropriate sanction:

- Contravention 1: $25,000 (plus GST)
- Contravention 2: $25,000 (plus GST)
- Contravention 3: $25,000 (plus GST)
- Contravention 4: $25,000 (plus GST)
- Contravention 5: Censure.

The Tribunal considered that contraventions of the ASX Market Rules that undermine the fairness and orderliness of the markets are serious contraventions. Contraventions 1 to 4 in this matter had the potential to undermine market integrity as the entry of the respective orders caused markets in those securities to not be both fair and orderly. An appropriate sanction should reflect the seriousness of the misconduct. The Tribunal has determined that Contraventions 1 – 4 are Level 2 Serious Contraventions, for which the applicable penalty range is $20,000 - $100,000 (plus GST).

The Tribunal considered that Contravention 5 was not of the same level of seriousness. The impact on the market and the potential to undermine the integrity of the market of the misconduct in Contravention 5 was minimal. Accordingly, the Tribunal has imposed a lesser sanction for Contravention 5.

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 ASX markets.

*On 1 August 2010, the supervision of real-time trading on Australia's domestic licensed financial markets and the supervision of the conduct of participants (including the relationship between participants and their clients) on those markets transferred to the Australian Securities and Investments Commission (ASIC). The conduct that is the subject of these contraventions occurred prior to the transfer date. ASX will continue to manage disciplinary matters for breaches of its operating rules occurring before the transfer date.

** The ASX Market Rules are now known as ASX Operating Rules.

Attachment A

Contravention 1

At 10:10:49 on 16 April 2008 Timber Hill entered an 'at market' Ask for 187,629 AMC into the Trading Platform on behalf of a client ('the AMC Ask').

Timber Hill entered the AMC Ask notwithstanding that immediately prior to its entry:

- The Bid/Ask/Last for AMC was $6.78/$6.79/$6.75; and
- The total AMC in the Bid Schedule was 170,533 with prices ranging from $6.78 to $5.61.

The entry of the AMC Ask into the Trading Platform resulted in a market for AMC not being both fair and orderly in that:

- The AMC Ask traded immediately with the entire Bid Schedule in 49 Market Transactions;
- The Market Transactions resulting from the AMC Ask caused the last price of AMC to fall from $6.75 to $5.61, a 17.25% decrease in the price of AMC;
- At 10:10:50 other Participants traded AMC at $6.70, close to the level at which AMC had traded prior to the entry of the AMC Ask; and
- Pursuant to a request from Timber Hill at 16:07 to cancel the Market Transactions resulting from the AMC Ask, the Dispute Governors convened and ordered the cancellation of all Market Transactions in AMC that traded between 10:10 and 10:12 at $6.49 and below – a total of 13 transactions.

Contravention 2

At 11:36:23 on 7 August 2008 Timber Hill entered an 'at market' Ask for 10,000 EDE into the Trading Platform on behalf of a client ('the EDE Ask').

Timber Hill entered the EDE Ask notwithstanding that immediately prior to its entry:

- The Bid/Ask/Last for EDE was $0.15/$0.18/$0.15; and
- The Bid Schedule consisted of orders for 8000 EDE at $0.15 and 20,000 EDE at $0.05.

The entry of the EDE Ask into the Trading Platform resulted in a market for EDE not being both fair and orderly in that:

- The EDE Ask traded immediately and in its entirety in two Market Transactions – 8000 EDE at $0.15 and 2000 EDE at $0.05;
- The Market Transactions resulting from the EDE Ask caused the price of EDE to fall from $0.15 to $0.05, a decrease of 66.67%; and
- The next Transaction to occur was for 10,000 EDE at $0.18 at 11:45:37.

Contravention 3

At 15:13:47 on 7 August 2008 Timber Hill entered an 'at market' Bid for 50,000 SEY into the Trading Platform on behalf of a client ('the SEY Bid').

The entry of the SEY Bid into the Trading Platform resulted in a market for SEY not being both fair and orderly in that:

- Immediately prior to the entry of the SEY Bid, the Bid/Ask/Last for SEY was $0.200/$0.250/$0.200;
- The SEY Bid traded immediately and in its entirety in four Market Transactions – 20,000 SEY at $0.250, 4800 SEY at $0.265, 15,000 SEY at $0.270 and 10,200 SEY at $0.300;
- The Market Transactions resulting from the SEY Bid caused the last prices of SEY to rise from $0.20 to $0.30, a total of $0.10 (50%); and
- Following a transaction at 15:49:15 on 7 August 2008, for 800 SEY at $0.295 and a further transaction at 10:08:56 on 15 August 2008 for 1852 SEY ay $0.270, the market for SEY did not return to close to its previous level until a transaction for 5000 SEY at $0.210 at 14:16:56 on 15 August 2008.

Contravention 4

At 11:00:43 on 30 September 2008 Timber Hill entered an 'at market' Ask for 100,000 RML into the Trading Platform on behalf of a client ('the First RML Ask').

Immediately prior to the entry of the First RML Ask into the Trading Platform, the Bid/Ask/Last for RML was $0.084/$0.085/$0.085.

The First RML Ask traded immediately in three Transactions – 20,000 RML at $0.084, 20,000 RML at $0.080 and 60,000 RML at $0.060. This resulted in a 29.4% decrease in the price of RML from $0.085 to $0.060.

At 11:01:43, Timber Hill entered a further 'at market' Ask for 100,000 RML into the Trading Platform on behalf of the same client ('the Second RML Ask').

Immediately prior to the entry of the Second RML Ask, the Bid/Ask/Last for RML was $0.060/$0.085/$0.060.

The Second RML Ask traded immediately in three Transactions – 40,000 RML at $0.060, 40,000 RML at $0.050 and 20,000 RML at $0.050. This resulted in a 16% decrease in the price of RML from $0.060 to $0.050.

At 11:02:44 Timber Hill entered a third 'at market' Ask for 23,600 RML into the Trading Platform on behalf of the same client ('the Third RML Ask').

Prior to the entry of the Third RML Ask into the Trading Platform, the Bid/Ask/Last for RML was $0.050/$0.085/$0.050.

The Third RML Ask traded immediately in two Transactions – 20,000 RML at $0.050 and 3600 RML at $0.010. This resulted in an 80% decrease in the price of RML from $0.050 to $0.010.

The entry of the First, Second and Third RML Asks (collectively, 'the RML Asks') into the Trading Platform resulted in a market for RML not being both fair and orderly in that:

- The Market Transactions resulting from the RML Asks caused the last price of RML to fall from $0.085 to $0.010, a total of $0.075 (88.2%);
- In the next Market Transaction to occur, at 11:27:30, other Participants traded RML at $0.052. At 13:59:15 RML traded at its previous level of $0.08; and
- Pursuant to a request from Timber Hill at 11:26 to cancel the market Transactions resulting from the RML Asks, the Dispute Governors convened and ordered the cancellation of all Market Transactions in RML that traded from 11:00 at $0.50 and below – a total of 4 transactions.

Contravention 5

At 14:53:46 on 31 October 2008, Timber Hill entered an Ask for 100 IGC at $0.150 into the trading platform on behalf of a client of Interactive Brokers.

At 14:53:53, Timber Hill amended the Ask to 100 IGC at $0.110.

At 14:53:57 Timber Hill amended the Ask again to 100 IGC at $0.105 ('the Amended IGC Ask').

The entry of the Amended IGC Ask into the Trading Platform resulted in a market for IGC not being both fair and orderly in that:

- Prior to its entry, the Bid/Ask/Last for IGC was $0.105/$0.110/$0.200;
- At 14:53:57, the Amended IGC Ask traded immediately and in its entirety in a Transaction for 100 IGC at $0.105;
- This transaction resulted in a decrease in the market price of IGC, from $0.200 to $0.105 (47.5%) and;
- The next Transaction in IGC occurred at 15:01:26 for 50,000 IGC at $0.190.