



## ASX Circular

Date: 14 July 2011

## Key topics

1. Westpac 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 ('the Tribunal') has imposed a fine of \$50,000 (plus GST) on Westpac Securities Limited ('WSL') for the incorrect treatment of certain Application Monies and Additional Margins contravening the following ASX Market Rules:

- a) ASX Market Rule 7.11.1 – WSL failed to comply with the relevant provision of the Corporations Act 2001 (Cth) ('the Act') and the Corporations Regulations 2001 (Cth) ('the Regulations') in relation to Application Monies<sup>1</sup> and Additional Margins<sup>2</sup> for the period 11 March 2004 to 23 January 2010 ('Contravention 1');
- b) ASX Market Rule 7.11.10 – WSL failed to perform reconciliations that were accurate in all respects in that those reconciliations failed to identify all Application Monies and Additional Margins that were required by the Act to be held in a trust account for the period required by the Act, the time, form and manner set out in the Procedures from on or around 6 October 2009 to 23 January 2010 ('Contravention 2').

WSL elected not to contest the contraventions before the Tribunal.

The circumstances of the matter are detailed as follows:

At all material times, WSL engaged two third parties (initially 'Third Party 1' and later 'Third Party 2', both of which were Market Participants) to provide clearing and settlement services ('the services') on its behalf. Third Party 1 and later Third Party 2 provided the services on behalf of WSL using an automated back office system for clearing and settling equities and exchange traded options that is used extensively in the Australian investments market throughout the Relevant Period ('the Software System'), utilising WSL's Clearing Participant Identification Number (PID).

In late 2010, WSL resigned as a Participant. In the course of preparing for this outcome, WSL's service provider Third Party 2 undertook the novation of the WSL client accounts from WSL's PID to Third Party 2's PID. This exercise was undertaken by Third Party 2 in the latter part of 2009 and early 2010, and it was at this time that a WSL responsible executive discovered the incorrect treatment of

1 Funds received from clients of WSL and held by it on behalf of the client, for the purposes of exercising rights issues upon acquisition of the right, or taking up any other type of offer for securities by an Issuer.

2 Funds paid by clients of WSL, and held by it on behalf of the client, for the purposes of providing additional cash collateral required by WSL in excess of and in addition to any cash or securities collateral required by the ACH Clearing Rules, in connection with the sale by the client of Options Market Contracts.

certain Application Monies and Additional Margins by the Software System.

It was as a result of this exercise that certain incorrect treatment by the Software System was discovered.

Although WSL placed reliance on Third Party 1 and Third Party 2 to provide the back office system and clearing, settlement and related services to it, in accordance with the ASX Market Rules, as the Participant, WSL is responsible for the Contraventions.

WSL operated a trust account into which it deposited Application Monies and Additional Margins.

The Application Monies and Additional Margins were monies to which Division 2 of Part 7.8 of the Act applied.

When Application Monies were initially received by WSL from a client, the Application Monies were flagged as trustable and the funds held in the Trust account. However from the date the Application Monies were held in the Trust account between the settlement date of the rights purchase (by the client) and either the date that the Application Monies were refunded to the client or the date the relevant portion of the Application Monies were paid to the issuer, the Application Monies were recorded in an Application Money account which was not designated as 'trustable' (i.e. monies to which s 981A and s 981B (1)(c) of the Act and Regulation 7.8.01(5) of the Regulations applied).

The relevant accounts used within the Software System for Additional Margins – 'Additional Margin Control Account' were outside the range of 'trustable' accounts as identified by the Software System's settings. As a result of the Additional Margins being accounted for in a non trustable account type, the funds representing the Additional Margins were transferred from the Trust account into the general account.

The Software System failed however to retain the Application Monies as items in the trust report from the time of the allocation of the scrip to the client to the payment of the settlement monies to the issuer. This 'anomaly' by the Software System was that the funds (Application Monies) received and subsequently paid to the company (issuer) were excluded from the trust account from the time of allocation of scrip to the date of payment (instead of being retained until the time of payment to the issuer). As the Application Monies which referred to the closed script lines did not appear on the items in the trust report, those funds were incorrectly withdrawn from the trust account and transferred to the general account.

WSL contravened Market Rule 7.11.10 by failing to perform the reconciliations required by the Rule in a manner which would identify all Application Monies and Additional Margins that were required by the Act to be held in a trust account until such time as the Application Monies and Additional Margins were not required to be held in trust.

WSL, while performing the reconciliations in accordance with the form set out in the Market Rules and the corresponding Procedure, did not perform the reconciliation in a manner which included a process by which WSL could manually (if necessary) identify all Application Monies and Additional Margins to ensure that the Application Monies and Additional Margins were treated in accordance with requirements of the Market Rules and the Act.

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

- a) WSL's disciplinary history – WSL has had one previous unrelated ASX Disciplinary Tribunal finding against it.
- b) WSL self reported the matter. WSL was the first entity to self report the issue to ASX.
- c) WSL fully assisted and cooperated with ASX in its investigation.
- d) The discovery of the trust account breaches and the incorrect treatment by the Software System, of Application Monies and Additional Margins, was a result of action taken by WSL to novate its client accounts and transfer those accounts to Third Party 2.
- e) The trusts account breaches, the subject of the Contravention 1, occurred over an extended period of time.

- f) WSL took immediate steps to prevent a recurrence of the misconduct prior to its resignation as a Participant.
- g) The misconduct attributed to WSL was unintentional.
- h) At no stage was any WSL customer negatively impacted or any market transaction not enabled as a result of the contraventions.
- i) No commercial advantage or financial benefit was obtained by WSL as a result of the contraventions.
- j) Although WSL placed reliance on Third Party 1 and Third Party 2 to provide the Software System and related services, in accordance with the ASX Market Rules, WSL was responsible for the Market Rule contraventions.
- k) 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 contravention of the ASX Market Rules was appropriately classified as a Level 2 (Serious Contravention), 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.

Given the aggravating and mitigating circumstances in this matter, the Tribunal determined that the total fine of \$50,000 (plus GST) for both contraventions represents an appropriate sanction in the circumstances.

The Tribunal's opinion is that this sanction will serve as a deterrent to other participants (and would have done so in respect of this participant (and their representatives) if had remained as a participant.), 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.

\*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 (ASIC). 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 (administered by ASX) and the ASIC Market Integrity Rules (ASX Market) (administered by ASIC). 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.