



## ASX Circular

Date: 14 July 2011

## Key topics

1. ABN-AMRO Clearing Sydney Pty Limited (formerly Fortis Clearing Sydney Pty Limited)

## Reading List

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

## Contact

Cigdem Kocak

## Telephone

(02) 9227 0112

ASX Limited  
 ABN 98 008 624 691  
 Exchange Centre  
 20 Bridge Street  
 Sydney NSW 2000  
 PO Box H224  
 Australia Square NSW 1215

Internet: <http://www.asx.com.au>

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 ABN-AMRO Clearing Sydney Pty Limited (formerly Fortis Clearing Sydney Pty Limited) ('ABN-AMRO') for the contraventions by an employee of ABN-AMRO's client, ('the Client of ABN-AMRO') of the following SFE Operating Rules:

- 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 ABN-AMRO is responsible for the orders of its client's employee entered through ABN-AMRO's terminal 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').

With respect to Contravention 1, the contravening conduct occurred prior to the entry of orders into the Terminal. With respect to Contravention 2, the intent by the Client of ABN-AMRO to exclude other Participants occurred prior to the entry of orders into the Terminal.

ABN-AMRO 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, a representative of another Participant's client ('the other broker') contacted the Client of ABN-AMRO and expressed interest in the SPI options, requesting prices in a number of March spreads, all for 89 lots. The Client of ABN-AMRO 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, the other broker informed the Client of ABN-AMRO 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.

The Client of ABN-AMRO stated that he would place opposing orders in the above contracts.

In a telephone conversation that commenced at 12:14:00, the Client of ABN-AMRO contacted the other broker's colleague, who stated that the other broker was '...looking at doing three different spreads 89 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 the other broker and the Client of ABN-AMRO. During the conversation the Client of ABN-AMRO advised the other broker of the prices at which he would trade the option spreads. Once the agreed price for each contract was confirmed, the Client of ABN-AMRO placed each leg of the spread as separate outright orders into the market and the other broker subsequently placed opposing orders resulting in six separate deals.

#### Contravention 1

In the circumstances, the Client of ABN-AMRO'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, the Client of ABN-AMRO's conduct contravened SFE Operating Rule 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, among other factors, the following matters:

- a) The disciplinary history of ABN-AMRO;
- b) ABN-AMRO assisted and cooperated with ASX in its investigation;
- c) The steps ABN-AMRO has taken to prevent a recurrence of the misconduct;
- d) The misconduct was intentional on the part of the Client of ABN-AMRO;
- e) The misconduct did not appear to be a systemic issue;
- f) ABN-AMRO did not benefit from the Pre-arrangement or the Trading to the Exclusion of Others;
- 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.

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.