

ASX Circular

Date: 25 September, 2009

Key topics

1. Credit Suisse Equities (Australia) 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

ASX's Disciplinary Tribunal ('the Tribunal') has determined the following:

Credit Suisse Equities (Australia) Limited ('CS Equities') contravened ASX Market Rule 5.7.3, in that it failed to ensure that two Cash Market Transactions to which it was a party settled on the third Business Day following the date that the transactions were created on or reported to the Market.

CS Equities did not contest the contravention before the Tribunal.

For this contravention the Tribunal imposed a fine of \$25,000 (plus GST).

The circumstances of this matter are detailed as follows:

On 29 February 2008, CS Equities received instructions from its client, Credit Suisse Europe ('CS Europe'), to sell 50,000 shares in BQT Solutions Limited ('BQT') ('the Original Order'). However, as a result of a CS Equities system error, the Original Order was accidentally rejected. CS Equities manually entered the Original Order later that day.

The underlying client of CS Europe, Credit Suisse Private Bank Zurich ('CS Zurich'), became aware that the Original Order had been rejected, and submitted a second order to sell 50,000 BQT. CS Equities was unaware that its client had resubmitted the Original Order.

As a result, CS Equities entered into two Cash Market Transactions to sell a total of 100,000 BQT on behalf of CS Europe ('the Relevant Transactions'), when the intention of the client was to sell 50,000 BQT.

On 1 March 2008 (i.e. T+1) CS Europe agreed to the duplicated trade.

The error was discovered on 7 April 2008. CS Europe advised CS Equities that CS Zurich had only intended to sell 50,000 BQT, not 100,000 BQT and it was identified that the Original Order had been inadvertently duplicated.

The Relevant Transactions were due to be settled on 5 March 2008 (T+3). The Relevant Transactions were not settled on 5 March 2008, and remained outstanding until they were settled on 16 April 2008 (T+30).

The respective Trading Participants did not agree to a later date for settlement of the Relevant Transactions. The Relevant Transactions were not Forward Delivery Transactions. ASX did not classify the Relevant Transactions as 'deferred delivery' or 'deferred settlement' transactions.

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

- a) Having regard to the inadvertent, one-off and isolated nature of the circumstances that gave rise to the contravention in this matter, the contravention was unintentional and was not indicative of a systemic problem or pattern of non-compliance;
- b) The remedial actions undertaken by CS Equities upon identification of the error;

- c) The advice of CS Equities that it updated its Settlement Failure Escalation Procedures;
- d) The disciplinary history of CS Equities - at the time of the contravention, CS Equities had one unrelated disciplinary sanction recorded against it by the Tribunal; post the contravention, CS Equities had one further unrelated disciplinary sanction, as well as one related disciplinary sanction, recorded against it by the Tribunal;
- e) CS Equities co-operated with ASX in relation to the conduct of its investigation into the matter; and
- f) CS Equities agreed at an early stage not to contest the contravention.

The Tribunal noted that:

- In spite of the remedial steps undertaken by CS Equities, this contravention arose as a result of a series of failures in CS Equities' systems. Firstly, there was no system to alert CS Equities that the trade had been entered twice, and secondly, there was no reconciliation process undertaken between the Original Order and the re-submitted order on 29 February 2008, and the subsequent resulting trades. A contract note or some other indication that the trade for the Original Order had failed should have been issued to CSE in February when the error occurred, but nothing happened. There were many opportunities for CS Equities to detect the error earlier, either prior to or immediately after the trades occurred. But it was not until 7 April 2008 that CS Equities identified, upon the advice of CSE, that the Original Order had been inadvertently duplicated;
- The purpose of ASX Market Rule 5.7.3 is to promote liquidity in the market, and to minimise counterparty risk and market exposure associated with longer settlement periods. This rule governs the relationship between Market Participants and the ASX in relation to settlement and promotes commercial certainty; and
- ASX Market Rule 5.7.3 is one of the means by which ASX has sought to satisfy its statutory obligation to do all things necessary to ensure that the Market, which it is licensed to conduct, is fair, orderly and transparent.

Disciplinary Tribunal Sanction Guidelines

The misconduct occurred before 31 March 2008, that being the Effective Time under the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook ('Rulebook'). Therefore, the applicable Tribunal sanction guidelines are those contained in ASX Market Rules Guidance Note 18 which was in effect at the material time. The Tribunal determined that this Contravention was classified as a Level 2 Serious Contravention, for which the applicable penalty range is \$20,000 - \$100,000 (plus GST). Taking into account the mitigating circumstances in this matter the Tribunal determined that a fine of \$25,000 was an appropriate sanction. The Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and Market Participants.