



ASX Circular

Date: 21 September 2010

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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DISCIPLINARY MATTERS

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

Macquarie Bank Limited ('MBL') contravened the following Operating Rules of Sydney Futures Exchange (the 'Operating Rules')*:

1. Operating Rule 3.1.10(a) by disclosing to another party information about an order not known to the rest of the Market and not specifically permitted otherwise under the Operating Rules;
2. Operating Rule 3.1.11 by withholding orders with an intent to obtain a counterparty;
3. Operating Rule 3.1.13 by arranging the details of a potential trade 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 Operating Rules;
4. Operating Rule 3.1.7 by not transmitting orders to the Trading Platform as soon as they were received;
5. Operating Rule 3.1.14 by executing trades with the intent to exclude other Participants or their Representatives; and
6. Operating Rule 3.1.16(b) by acting in a manner which had a detrimental effect, as determined by the Exchange, on the client's best interests.

The six contraventions all occurred on 10 June 2009.

MBL did not contest liability in respect to the contraventions (with the exception of contravention 6). There was no agreement between the parties in terms of the appropriate penalty.

For the above six contraventions, the Tribunal imposed a fine of \$50,000 (plus GST).

The circumstances of this matter are detailed as follows:

On 10 June 2009 at 5:25pm, a representative of MBL (the 'Representative') received an order from the first client ('C1') to sell 2000 June 2009 10 Year Commonwealth Treasury Bond Futures Contracts (XTM9); and began to execute the order in accordance with C1's instructions.

At 6:37pm, a second client ('C2') contacted the Representative and enquired about Block Trades in XTM9, to which the Representative noted that he had "plenty to sell". C2 placed an order to buy 1388 XTM9. The Representative disclosed information about C1's order to C2 when this information was not available to the Market in breach of Operating Rule 3.1.10(a).

At 6:39pm, the Representative contacted C1, who agreed to a trade of 1388 XTM9 at a price of 94.425.

Following discussions with SFE Market Control, the Representative became aware that Block Trades in June 10 Year Commonwealth Treasury Bond Futures Contracts were not permitted within three days before expiry.

At 6:51pm, the Representative informed C2 about the unavailability of the Block Trade. The Representative indicated to C2 that he would execute the contracts against the counterparty to the proposed Block Trade on screen. C2 instructed the Representative to execute the orders on screen and confirmed the price of the contract to be the same as the initial Block Trade. During this conversation the Representative arranged the price of the proposed trade with C1. These details were not entered into the Trading Platform and therefore were not made known to the rest of the Market in contravention of Operating Rule 3.1.13.

At 6:55pm, the Representative contacted C1 to advise that he would have to execute the orders to sell XTM9 on screen, allowing the Market time to participate.

At 7:06pm, the Representative entered C1's order to sell 1388 XTM9 at 94.425. Approximately 16 seconds later, at 7:07pm, the Representative entered C2's order to buy 1388 XTM9 paying 94.425. This order immediately resulted in a transaction with other market orders for a total of 175 lots and traded with C2's order for 1213 lots at 94.425.

Once the Representative became aware that a Block Trade was not possible, he attempted to implement a trade that resembled a Block Trade. The Representative withheld the clients' opposing orders, so as to obtain a counterparty for each order in breach of Operating Rule 3.1.11, rather than releasing them into the Market once it was evident that the Block Trade could not be executed. The Representative discussed placing the relevant orders in the Market with C1 and C2. He then entered the clients' orders slightly above the last bid in order to increase the likelihood of the orders trading with each other to the exclusion of other Participants in breach of Operating Rule 3.1.14 (even though the Representative waited 16 seconds between the client's orders).

Prior to the entry of C1's sell order (and at the time C2 placed the order to buy 1388 XTM9 on screen) the price of the XTM9 was trading between 94.410 – 94.415. Had the Representative immediately placed C2's order into the Trading Platform as required by Operating Rule 3.1.7, C2 may have had an opportunity to pay a lower price for at least part of the order. It was on this basis that the Exchange determined that MBL acted in a manner which had a detrimental effect on the client's best interests pursuant to Operating Rule 3.1.16(b).

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

- The conduct was at least reckless (noting, however, that the initial conduct was based on a genuine mistake as to the availability of Block Trades);
- The conduct had the potential to threaten the integrity and efficiency of the Market;
- MBL self-reported the conduct in a timely fashion;
- MBL fully co-operated with ASX Compliance in its investigation of the contraventions;
- Apart from contravention 6, MBL did not contest liability in relation to the contraventions;
- MBL took remedial action to prevent reoccurrence of the contravening conduct;
- The conduct that constituted the contraventions appeared to have been an isolated incident;
- MBL's contrition and general culture of corporate compliance;
- The disciplinary history of MBL; and
- Comparable tribunal decisions concerning contraventions of the same Operating Rules.

Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008 (and prior to 1 August 2010)*, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook (the 'Rulebook'), the Tribunal was bound by the sanction guidelines (Annexure A of the Rulebook Procedures) in making its determination as to sanction.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the six contraventions of the Operating Rules were appropriately classified as Level 2 (Serious Contraventions), for which the applicable penalty range is \$20,000 - \$100,000 (plus GST). Given that the contraventions occurred as a result of one set of factual circumstances the Tribunal imposed a single aggregate penalty for the six contraventions in accordance with the totality principle.

The Tribunal considers that the total fine of \$50,000 (plus GST) represents an appropriate sanction in the circumstances, having regard to the aggravating and the mitigating factors. The Tribunal is of the view that this sanction recognises the seriousness of the contraventions and is sufficient to act as both a general deterrent to other Participants and specific deterrent to MBL and to ensure, as far as possible, the integrity of the Market.

* 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 Operating Rules of Sydney Futures Exchange by the ASX 24 Operating Rules (administered by ASX) and the ASIC Market Integrity Rules (ASX 24 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.