

ASX Circular

Date: 2 November, 2009

Key topics

1. Euroz 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 has determined the following:

Euroz Securities Limited ('Euroz') contravened the following ASX Market Rules:

- (a) ASX Market Rule 7.4.1(b), in that, between 17 April 2007 and 26 March 2008 ('the Relevant Period'), Euroz entered into a total of 87 Market Transactions for two of its clients without having specific instructions to do so ('the Relevant Transactions'); and
- (b) ASX Market Rule 7.4.1(c), in that, during the Relevant Period, Euroz allocated the Relevant Transactions to two of its clients' accounts without having specific instructions to do so.

Euroz did not contest the contraventions before the Tribunal.

For these contraventions the Tribunal imposed a fine of \$40,000 (plus GST).

The circumstances of this matter are detailed as follows:

During the Relevant Period:

- The relevant Euroz advisor ('the Advisor') engaged in discretionary trading in relation to accounts managed by the Advisor for two Euroz retail clients;
- Euroz's Australian Financial Services Licence did not authorise Euroz to be a Managed Discretionary Account ('MDA') operator, that is Euroz was not entitled to operate discretionary accounts on behalf of its clients;
- Euroz prohibited the operation of discretionary accounts and the Advisor was well aware of this fact; and
- Pursuant to ASX Market Rule 7.4.1, Euroz could only enter into a Market Transaction for its clients pursuant to the specific instructions of a client (or of a person authorised in writing by a client to give such instructions), that is Euroz was not entitled to operate discretionary accounts on behalf of clients.

Discretionary trading in relation to the First Client's account

The First Client requested and insisted (when informed by the Advisor that this was prohibited by Euroz) that the Advisor execute trades on the First Client's account on a discretionary basis.

Between 23 July 2007 and 26 March 2008, Euroz (through the actions of the Advisor):

- Entered into a total of 35 Market Transactions on behalf of the First Client where Euroz had not, in each instance, received specific instructions from the First Client to enter into the transaction; and
- Allocated those transactions to the First Client's account.

Discretionary trading in relation to the Second Client's account

The Advisor suggested to the Second Client that, whilst the Second Client was overseas for several months, the Advisor would arrange for trades to be booked to the Second Client's account without the Second Client having placed the relevant order. The Second Client agreed to that arrangement.

Although the Second Client was aware that trades were being executed on a discretionary basis on the account and did not have any complaint with respect to that arrangement, the Second Client was unaware that the Advisor executing discretionary trades was contrary to Euroz's compliance policies, the *Corporations Act 2001* (Cth) and the ASX Market Rules. The Advisor did not inform the Second Client of those prohibitions.

Between 17 April 2007 and 17 September 2007, Euroz (through the actions of the Advisor):

- Entered into a total of 52 Market Transactions on behalf of the Second Client where Euroz had not, in each instance, received specific instructions from the Second Client to enter into the transaction; and
- Allocated those transactions to the Second Client's account.

Remedial actions taken by Euroz

Upon becoming aware that the Advisor had engaged in discretionary trading in relation to the First and Second Client's accounts, Euroz:

- Suspended the Advisor from trading or contacting Euroz's clients;
- Immediately self-reported the matter to ASX and ASIC and kept ASX fully informed as to the steps that it was taking to deal with this matter;
- Immediately engaged an external legal advisor to conduct a review of the circumstances of the matter;
- Fully briefed each Client as to the circumstances of this matter and made full and fair financial settlement with each Client; and
- Conducted an investigation into all of the accounts managed by the Advisor.

Following the completion of the review, training and counselling of the Advisor, Euroz permitted the Advisor to return from suspension and recommence work subject to stringent conditions. Euroz also directed the Advisor to pay a contribution toward commercial settlements Euroz had reached with the First and Second Client.

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

- a) The misconduct was self-reported in a timely and comprehensive manner;
- b) The contravening conduct did not ultimately result in loss or injury to the First or Second Client, or to any other party;
- c) That Euroz has taken steps to prevent a recurrence of the contravening conduct;
- d) The misconduct by the Advisor was intentional and was undertaken by the Advisor with the knowledge that discretionary trading was prohibited by Euroz, and in respect of one Client was undertaken at the Client's insistence;
- e) The discretionary trading arose from the isolated activities of one advisor and was not in any way condoned or encouraged by Euroz;

- f) The contravening conduct occurred over an extended period of time and consisted of multiple acts of discretionary trading but only concerned two clients;
- g) The misconduct had the potential to damage the reputation and integrity of the ASX and the market it operates;
- h) The disciplinary history of Euroz, having appeared before the Tribunal on one previous occasion in 2001;
- i) Euroz fully co-operated in a timely fashion with ASX in relation to the conduct of ASX's investigation into the matter; and
- j) Euroz agreed at an early stage not to contest the contraventions brought against it.

Disciplinary Tribunal Sanction Guidelines

The Tribunal determined that these contraventions were classified as Level 2 Serious Contraventions under Guidance Note 18 (which was in effect during the Relevant Period). The applicable penalty range for Level 2 contraventions is \$20,000 - \$100,000 (plus GST). The Tribunal considered that these contraventions were serious as the relevant Market Rules are intended to protect clients from unauthorised or illicit discretionary trading. The importance of protecting clients and maintaining the integrity of the markets is of paramount concern to the Tribunal, and should be to all Market Participants.

The Tribunal notes that Euroz took disciplinary action against the Advisor and arranged compliance briefings for other staff. The Tribunal acknowledges these remedial steps that were taken to avoid future contraventions and recognises the importance of educating and training staff on compliance matters. The Tribunal expects that Market Participants have in place systems and controls that closely monitor the trading activities of all advisors so discretionary trading is not permitted to occur. Compliance programs should be in place to detect unauthorised discretionary trading and to immediately shut it down.

Given the aggravating and mitigating circumstances in this matter the Tribunal determined that a fine of \$40,000 (plus GST) was an appropriate sanction. The Tribunal is satisfied that the imposition of this fine appropriately serves the purposes of protecting the interests of ASX and its participating organisations, and of promoting confidence in the integrity of the markets.