



## ASX Circular

Date: 26 October 2010

Key topics

1. BGC Partners (Australia) Pty 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

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

BGC Partners (Australia) Pty Limited ('BGC') contravened the following Operating Rules of the Sydney Futures Exchange\* (the 'Operating Rules'):

- Rule 3.1.1(a)(ii) ('Expressions of Interest') on three occasions; and
- Rule 3.3.5(a) ('Request for Quote') on eight occasions;
- Rule 3.2.2(b) ('Strategy Trades') on two occasions; and
- Rule 3.1.16(b) ('Acting in Accordance with Client Instructions and Client's Best Interest') on one occasion.

The contravening conduct occurred between 18 and 26 March 2009. All of the contraventions related to trading in the Sydney Future Exchange (the 'Exchange') energy market.

BGC did not contest the contraventions before the Tribunal.

The Tribunal imposed a total fine of \$60,000 (plus GST) and determined that BGC implement an education program pursuant to which BGC undertakes training on the receipt and management of client orders in relation to the energy market.

The circumstances of the matter are detailed as follows:

### Expressions of Interest contraventions

On three occasions (on 19, 20 and 25 March 2009) BGC received Expressions of Interest from a client in relation to certain energy market Strategy Trades. BGC contravened Operating Rule 3.1.1(a)(ii) (Expressions of Interest) on each of these three occasions in that it failed to make the necessary enquiry via the Trading Platform 'Message' facility upon receipt of the Expression of Interest from its client prior to commencing negotiations with other parties in respect of the Strategy Trades.

### Request for Quote contraventions

On eight occasions (on 18, 19, 20, 25 and 26 March 2009) BGC executed pre-negotiated business orders for Strategy Trades for a number of clients, following the transmission of Request for Quote Messages pursuant to Operating Rule 3.3.5(a) (Procedures prior to Order Entry on the Trading Platform). On each occasion BGC contravened Rule 3.3.5(a) in that it failed to include the ratio of Option Contracts to the Futures Contracts the subject of the Strategy Trades in the Request for Quote Message, which is a requirement of Procedure 3.3 promulgated under that Rule.

### Strategy Trade contraventions

On two occasions (on 18 and 26 March 2009), BGC executed pre-negotiated business orders for an Option Strategy involving Option Contracts and Futures Contracts. When allocating the resulting contracts comprising the Option Strategy Trade to the relevant clients, BGC contravened Operating Rule 3.2.2 (b) (Strategy Trades) in that it did not allocate each leg of the Strategy Trade to the same account; but instead allocated the different legs to the accounts of different clients.

### Acting in Accordance with Client's Best Interest contravention

On 20 March 2009, BGC executed a Strategy Trade for a client in a way which contravened Operating Rule 3.1.16(b) in that it acted in a manner which the Exchange determined had a detrimental effect on the client's best interests.

BGC acknowledged that under Operating Rule 3.1.16(b), the Exchange determines whether the actions of a participant have a detrimental effect on the client's best interests.

The Tribunal accepted the Exchange's determination that BGC had not executed the relevant Option Strategy at the best price available having regard to the then current market, in circumstances where it was seeking to undertake pre-negotiated business under Operating Rule 3.3.2.

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

- a) The contraventions were inadvertent.
- b) Subsequent to the incidents BGC provided training to its staff regarding the expressions of interest provisions of the Operating Rules, which included inviting representatives of the Exchange's compliance team to contribute to that training.
- c) BGC made an early decision not to contest liability and penalty.
- d) BGC co-operated with ASX in relation to the conduct of its investigation.
- e) BGC's disciplinary history.
- f) The contraventions were not self-reported by BGC.
- g) The fact that there were multiple rule breaches of a similar nature, albeit in a relatively short period of time (around 10 business days) in March 2009. In particular, the repeated contraventions of Operating Rules 3.1.1(a)(ii) and 3.3.5(a) appeared to arise out of the same misinterpretation of the requirements under each of those Operating Rules.
- h) The contraventions had the potential to undermine orderliness, fairness and, in particular, the transparency of the Futures Market.

### 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 to the Rulebook Procedures) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the three Expressions of Interest Contraventions, the eight Request for Quote Contraventions, and the two Strategy Trade Contraventions of the Operating Rules were appropriately classified individually as Level 1 (Contraventions of Concern), for which the applicable penalty range is from a censure to a fine of \$20,000. In the circumstances the Tribunal is of the view that it is appropriate to group the Level 1 contraventions and impose a single penalty of \$40,000.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the Acting in Accordance with Client's Best Interest contravention is appropriately classified as a Level 2 (Serious Contravention) for which the applicable penalty range is a fine of between \$20,000 to \$100,000. This is regarded as a serious contravention and the Tribunal is of the view that a fine of \$20,000 is appropriate.

The Tribunal is also of the view that in the circumstances it is appropriate that BGC implement an education program pursuant to which BGC undertakes training on the receipt and management of client orders in relation to the energy 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.