

ASX Circular

Date: 3 November, 2009

Key topics

1. Bell Potter Securities 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 has determined the following:

On 10 April 2008 Bell Potter Securities Limited ('Bell Potter') contravened the following ASX Market Rules:

Contravention 1A – ASX Market Rule 4.10.1(a)(ii) and (v)

Bell Potter failed to maintain sufficiently detailed records in relation to instructions received to enter into a Market Transaction on behalf of a client to sell a quantity of fully paid ordinary shares in Ale Property Group ('LEP').

Contravention 1B – ASX Market Rule 4.10.1(a)(ii)

Bell Potter failed to accurately maintain sufficiently detailed records in relation to instructions received to enter into a Market Transaction on behalf of a client to buy a quantity of LEP.

Contravention 1C – ASX Market Rule 4.10.1

Bell Potter failed to create a record in relation to instructions received to enter into Market Transactions on behalf of a client to sell a quantity of LEP.

Contravention 1D – ASX Market Rule 4.10.1

Bell Potter failed to create a record in relation to instructions received to enter into Market Transactions on behalf of a client to buy a quantity of LEP.

Bell Potter did not contest the contraventions before the Tribunal.

For these contraventions the Tribunal imposed a fine of \$15,000 (plus GST).

The circumstances of this matter are detailed as follows:

ASX Market Rule 4.10.1 prescribes certain requirements on Market Participants regarding order records. Bell Potter failed to meet these required standards in relation to two buy orders and two sell orders that it received from two of its clients (referred to as 'Buyer' and 'Seller'). Bell Potter executed the trades by way of a Special Crossing. The Special Crossing was cancelled later the same day and re-submitted with amended details. The corresponding order records are the subject of these contraventions.

On 10 April 2008 at about 13:43, Bell Potter received instructions from the Seller to enter into a Market Transaction on its behalf to sell 700,000 LEP at \$2.70. The record of these instructions inaccurately recorded the time the instructions were received and the number of LEP to be sold.

At about 13:48, Bell Potter received instructions from the Buyer to enter into a Market Transaction on its behalf to buy 700,000 LEP at \$2.70. The record of these instructions inaccurately recorded the number of LEP to be bought.

At 13:48:27, Bell Potter reported a Special Crossing of 700,000 LEP at \$2.70 to the Trading Platform ('First Special Crossing').

At about 14:30, Bell Potter received instructions from the Seller to enter into a Market Transaction on its behalf to sell 114,106 LEP at \$2.70. Bell Potter failed to create a record of these instructions.

At about 16:20, Bell Potter received instructions from the Buyer to enter into a Market Transaction on its behalf to buy 114,106 LEP at \$2.70. Bell Potter failed to create a record of these instructions.

At 16:36:00, Bell Potter cancelled the First Special Crossing. A revised Special Crossing was entered at 16:36:16.

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

- a) Bell Potter co-operated with ASX in relation to the conduct of its investigation into the matter;
- b) The misconduct was an isolated incident and was not intended to be manipulative, deceptive or fraudulent;
- c) Bell Potter agreed not to contest the contraventions; and
- d) Bell Potter advised that it has taken steps to prevent a recurrence of the misconduct.

The Tribunal noted that:

- Bell Potter had breached ASX Market Rule 4.10.1 on one previous occasion (although not in comparable circumstances). The incomplete order records in this matter did not relate to serious misconduct such as market manipulation, and the level of financial penalty reflects that fact.
- The Tribunal was cognisant of past Tribunal statements regarding the importance of maintaining order records. The requirement that Participants ensure that transactions are recorded in the specified time and manner is an important client protection safeguard against unauthorised trading activity. The requirements under the Rules are intended to protect and maintain the integrity of ASX and facilitate the conduct of an orderly market.
- Bell Potter took remedial steps to prevent a recurrence of the contravening conduct. Bell Potter advised that it had introduced electronic order recording for its institutional orders. Order records must now be completed prior to the Designated Trading Representative entering the order into the trading platform. This should minimise the potential for a reoccurrence of a similar breach. The Tribunal recognises this as an important consideration since one of the primary purposes of the imposition of sanctions is to deter future contraventions.

Disciplinary Tribunal Sanction Guidelines

The Tribunal considers that these contraventions should be classified as Level 1 'contraventions of concern' under Annexure A to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook. The indicative range of sanction for a Level 1 contravention is between a Censure (no fine) to a maximum of \$20,000 (plus GST). The Tribunal is satisfied that the financial penalty of \$15,000 (plus GST) is appropriate, having considered the mitigating and aggravating circumstances in relation to these contraventions.

However, the Tribunal noted that there is considerable overlap in the conduct applicable to each category. Should the Tribunal find that Bell Potter contravened ASX Market Rule 4.10.1 on another occasion in the future, Bell Potter can expect that such misconduct may be classified as a Level 2 'Serious Contravention' attracting a penalty range of \$20,000 to \$100,000.

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.