



ASX Circular

Date: 7 December 2010

Key topics

1. Morgan Stanley Smith Barney Australia Pty Limited

Reading List

Client Advisers
 Compliance Managers
 DTR Operators
 Managing Directors
 Office Managers
 Operations Managers (back office)

Contact

Angus Cameron

Telephone

(02) 9227 0329

ASX Limited
 ABN 98 008 624 691
 Exchange Centre
 20 Bridge Street
 Sydney NSW 2000
 PO Box H224
 Australia Square NSW 1215

Internet: <http://www.asx.com.au>

No responsibility is accepted for any inaccuracies contained in the matter published.

DISCIPLINARY MATTERS

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

At the time of the contraventions, Morgan Stanley Smith Barney Australia Pty Limited ('MSSB') was known as Citi Smith Barney Pty Limited ('CSB'). CSB became known as MSSB on 1 June 2009 following a joint venture between Morgan Stanley and Citi. (References to MSSB also include references to CSB with respect to the period prior to 1st June, 2009.)

CSB contravened ASX Market Rule 7.4.1(c)* in that between 12 September 2007 and 25 March 2009 (the 'Relevant Period') CSB allocated approximately 212 market transactions to a client's account where the majority of the market transactions were not allocated on the prior specific instructions of the client.

MSSB did not contest the contraventions before the Tribunal.

For these contraventions the Tribunal imposed a fine of \$30,000 (plus GST).

The circumstances of this matter are detailed as follows:

During the Relevant Period:

- the relevant CSB advisor (the 'Advisor') engaged in unauthorised discretionary trading in relation to an account managed by the Advisor for a CSB retail client (the 'Client');
- there were approximately 212 market transactions allocated to the account of the Client;
- the Advisor issued trading confirmations for each of the 212 market transactions allocated to the Client's account;
- CSB's Australian Financial Services Licence authorised CSB to be a Managed Discretionary Account ('MDA') operator, however there was no MDA agreement in place with the Client;
- the Client was the only person authorised to give instructions to CSB to trade on the account; and
- the Advisor allocated a number of market transactions to the Client's account which were not executed in accordance with the requirements of ASX Market Rule 7.4.1 as the market transactions were not allocated on the prior specific instructions of the client and there was no MDA agreement in place.

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

- a) MSSB advised that it has made a payment to the client in settlement of the issues arising from the unauthorised discretionary trading including the brokerage charged for that trading;
- b) The misconduct was self-reported in a timely and comprehensive manner;
- c) MSSB 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 CSB;

- e) the contraventions directly relate to the issue of client protection;
- f) the unauthorised discretionary trading arose from the isolated activities of one advisor and was not in any way condoned or encouraged by CSB;
- g) the contravening conduct occurred over an extended period of time and consisted of multiple acts of unauthorised discretionary trading but only involved one client;
- h) CSB terminated the Advisor's employment which serves as an additional deterrent and appropriately stresses the importance of this Market Rule;
- i) the disciplinary history of CSB, having had no prior Tribunal determinations recorded against it;
- j) CSB and MSSB fully co-operated in a timely fashion with ASX in relation to the conduct of its investigation; and
- k) CSB and MSSB agreed at an early stage not to contest the contraventions brought against it.

Disciplinary Tribunal Sanction Guidelines

The Tribunal has had close regard to the Sanction Guidelines contained in Annexure A to the ASX Disciplinary Processes and Appeals Rulebook (the 'Rulebook') in making its determination as to sanction.

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). Given the mitigating and aggravating circumstances in this matter the Tribunal determined that a fine of \$30,000 (plus GST) was an appropriate sanction. In particular, in determining the appropriate penalty, the Tribunal placed considerable emphasis on the payment made by MSSB to the client in settlement of the issues arising from the unauthorised discretionary trading (including, brokerage fees).

The Tribunal notes that CSB took disciplinary action against the Advisor resulting in the dismissal of the Advisor. CSB arranged a compliance memo to be sent to all relevant 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 unauthorised discretionary trading is not permitted to occur. Compliance programs should be in place to detect unauthorised discretionary trading and to immediately shut it down.

The Tribunal is satisfied that the imposition of this fine appropriately serves as a deterrent to any future misconduct by MSSB and as a deterrent to all other regulated persons from engaging in the same or similar conduct.

*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 ASX Market Rules by the ASX Operating Rules (administered by ASX) and the ASIC Market Integrity Rules (ASX 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.