



ASX Circular

Date: 15 September 2011

Key topics

1. Timber Hill (Australia) Pty Ltd

Reading List

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

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DISCIPLINARY MATTERS

The Appeal Tribunal dismissed an appeal by Timber Hill (Australia) Pty Limited ('Timber Hill') of a determination by the Disciplinary Tribunal that had found Timber Hill liable for eight ASX Market Rule contraventions. The Disciplinary Tribunal subsequently imposed a total penalty of \$250,000 (plus GST) for the following Contraventions:

Contravention 1:

Timber Hill contravened ASX Market Rule 14.1.1 on 5 March 2009 by entering an 'at market' Order to purchase 2,000 SPDR S&P/ASX 200 Listed Property Fund ('SLF'), which resulted in a market for SLF that was not both fair and orderly.

Contravention 2:

Timber Hill contravened ASX Market Rule 14.1.1 on 24 April 2009 by entering 24 'at market' Orders to sell Quickstep Holdings Limited ('QHL'), which resulted in a market for QHL that was not both fair and orderly.

Contravention 3:

Timber Hill contravened ASX Market Rule 14.1.1 on 27 April 2009 by entering 20 Orders to purchase Billabong International Limited ('BBG'), which resulted in a market for BBG that was not both fair and orderly.

Contravention 4:

Timber Hill contravened ASX Market Rule 14.1.1 on 27 April 2009 by entering an 'at market' Order to purchase Mineral Resources Limited ('MIN'), which resulted in a market for MIN that was not both fair and orderly.

ASX withdrew Contravention 5

Contravention 6:

Timber Hill contravened ASX Market Rule 14.1.1 on 7 May 2009 by entering an 'at market' Order to purchase Clive Peeters Limited ('CPR'), which resulted in a market for CPR that was not both fair and orderly.

ASX withdrew Contravention 7

Contravention 8:

Timber Hill contravened ASX Market Rule 14.1.1 on 5 June 2009 by entering 19 Orders to purchase Emeco Holdings Limited ('EHL'), which resulted in a market for EHL that was not both fair and orderly.

Contravention 9:

Timber Hill contravened ASX Market Rule 14.1.1 on 9 June 2009 by entering 97 Orders to sell Emeco Chess Depository Interests issued by Coeur D'Alene Mines Corporation ('CXC'), which resulted in a market for CXC that was not both fair and orderly.

Contravention 10:

Timber Hill contravened ASX Market Rule 13.3.1 between 5 March 2009 and 9 June 2009, in that it failed at all times to have in place appropriate automated filters in relation to its system for Automated Order Processing ('AOP').

See Attachment A for full details of the contraventions.

In determining the penalty the Disciplinary Tribunal considered, among other things, the following factors:

- a) Timber Hill had taken steps to improve its AOP filters in an effort to prevent a recurrence of future contraventions;
- b) Timber Hill assisted and cooperated with ASX throughout the investigation of the matter;
- c) Timber Hill's disciplinary history;
- d) the misconduct were repeat contraventions;
- e) the misconduct was not an isolated occurrence and occurred over a three month period;
- f) the misconduct appeared to have been systemic;
- g) the misconduct had at least the potential to result in loss to other parties; and
- h) the misconduct threatened the integrity and efficiency of the market.

Given the aggravating and mitigating circumstances in this matter, the Tribunal determined it was appropriate to sanction Timber Hill \$210,000 (plus GST) for the seven contraventions of Market Rule 14.1.1 and \$40,000 (plus GST) for the contravention of Market Rule 13.3.1.

The Tribunal considered contraventions of the ASX Market Rules that undermine the fairness and orderliness of the markets are serious and that its fine should reflect the seriousness of the misconduct. The Tribunal determined that the contraventions are Level 2 (Serious) Contraventions, for which the applicable penalty range is \$20,000 – \$100,000 (plus GST).

Although the orders referred to in Contraventions 1, 2, 3, 4, 6, 8 and 9 were entered at the Best Bid/Best Offer at the time, the Tribunal considered that while the current Best Bid/Best Offer is a way of identifying the spectrum of orders in the market for a product at a particular time, market participants are responsible for considering all market outcomes prior to entering orders, ensuring that any order submitted to ASX does not result in an unreasonable price variation that may have the effect of not maintaining a fair and orderly market.

The Tribunal found that Market Rule 13.3.1 was contravened on one occasion, and Market Rule 14.1.1 was contravened on seven distinct occasions, at different times and in relation to different securities, which resulted in the creation on each occasion of a disorderly market, and with it the potential for flow-on damage to the ASX, Market Participants and investors generally.

The Tribunal formed the view that this sanction serves as a deterrent to this and other Market Participants from engaging in similar misconduct, and appropriately serves the interests of ASX and Market Participants, and promotes confidence in the integrity of the markets.

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. 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. 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.

Contravention 1:

- At 10:01:23.05 on 5 March 2009, Timber Hill entered an 'at market' Order to purchase 2,000 SLF ('SLF Order'), notwithstanding that immediately prior to its entry, the Bid/Ask/Last for SLF was \$5.52/\$7.62/\$5.90.
- The entry of the SLF Order into the Trading Platform resulted in a market for SLF not being both fair and orderly, which contravened Market Rule 14.1.1, in that:
 - the SLF Order traded immediately and in its entirety, resulting in Timber Hill purchasing 2,000 SLF at \$7.62;
 - the trade caused the price of SLF to increase \$1.72, or 29%, from \$5.90 to \$7.62;
 - the next trade in SLF was at 10:36:40.69 in which 1,000 SLF traded at \$5.90, returning to its previous level;
 - the SLF Order gave rise to a market in SLF that varied significantly from other markets in SLF which existed a relatively short time before and after it;
 - the price increase caused by Timber Hill's entry of the SLF Order was inconsistent with the history of and recent trading in SLF; and
 - the price increase caused by Timber Hill's entry of the SLF Order was inconsistent with trading in SLF on 5 March 2009.

Contravention 2:

- In a three second period after 10:29:29.70 on 24 April 2009, Timber Hill entered 24 'at market' Orders to sell QHL ('QHL Orders'), notwithstanding that immediately prior to their entry, the Bid/Ask/Last for QHL was \$0.23/\$0.235/\$0.23 and the Bid schedule consisted of orders for 747,746 QHL at prices from \$0.23 to \$0.14.
- The entry of the QHL Orders into the Trading Platform resulted in a market for QHL not being both fair and orderly, which contravened Market Rule 14.1.1, in that:
 - Each Order to sell QHL entered by Timber Hill during the period traded in its entirety resulting in Timber Hill entering into 58 Market Transactions, selling a total of 466,598 QHL at prices from \$0.23 down to \$0.17;
 - the 58 Market Transactions entered into by Timber Hill caused nine price decreases and a combined decrease in the price of QHL of \$0.06 or 26% within the three second time period;
 - the volume of QHL sold by Timber Hill during the period equated to 33.6% of the overall volume of QHL traded on 24 April 2009 and was greater than the average daily volume for the previous five days QHL traded (464,429);
 - Timber Hill was the only Participant that sold QHL during the three second time period;
 - the price of QHL began increasing within 30 seconds of the trading by Timber Hill and returned to a level near that which it was at prior to the trading by Timber Hill (\$0.21) approximately 30 minutes later;
 - the QHL Orders gave rise to a market in QHL that varied significantly from other markets in QHL which existed a relatively short time before and after it;
 - the rapid and significant price decline in QHL caused by Timber Hill's entry of the QHL Orders was inconsistent with the history of and recent trading in QHL.
 - the rapid and significant price decline caused by Timber Hill's entry of the QHL Orders was inconsistent with trading in QHL on 24 April 2009 in that the low price of \$0.17 was 16% lower than the average price paid for QHL for 24 April 2009 (\$0.201); and
 - there were no market announcements on 24 April 2009 that would explain a 26% decrease in the price of QHL.

Contravention 3:

- Between 10:02:29.39 and 10:02:30.46 on 27 April 2009, Timber Hill entered 20 Orders to purchase BBG ('BBG Order'). Immediately prior to the entry, the Bid/Ask/Last for BBG was \$9.28/\$9.35/\$9.35.
- The entry of the BBG Orders into the Trading Platform resulted in a market for BBG not being both fair and orderly, which contravened Market Rule 14.1.1, in that:
 - immediately prior to the entry of the BBG Orders, the Bid/Ask/Last for BBG was \$9.28/\$9.35/\$9.35;
 - ten of the BBG Orders traded immediately resulting in Timber Hill entering into 26 Market Transactions, purchasing a total of 10,372 BBG at prices from \$9.35 up to \$10.60;
 - the 26 Market Transactions entered into by Timber Hill caused eight (or 88.9%) of the nine price increases and a combined price increase of \$1.25 or 13.4% within the two second period;
 - between 10:02:31.09 and 10:02:32.71, the price of BBG increased a further \$0.45 to \$11.05 due to trading by other brokers and traded at or around that level for the next 10 seconds;
 - at 10:02:52.21, 22 seconds after the last BBG Order, the price of BBG began falling and between 10:03:50 and 10:03:58 traded in the range \$9.41 to \$9.53, prices near to the price at which BBG was trading prior to the Market Transactions caused by the entry of the BBG Orders;
 - the BBG Orders gave rise to a market in BBG that varied significantly from other markets in BBG which existed a relatively short time before and after it;
 - trading resulting from the BBG Orders was inconsistent with the history of, and recent trading in, BBG; and
 - there were no market announcements on 27 April 2009 that would explain a 13.4% increase in the price of BBG.

Contravention 4:

- At 10:04:30.95 on 27 April 2009, Timber Hill entered an 'at market' Order to purchase 7,350 MIN ('MIN Order 1'). Prior to MIN Order 1, the Bid/Ask/Last for MIN was \$3.55/\$3.59/\$3.55.
- MIN Order 1 traded immediately in its entirety, resulting in an increase in the price of MIN from \$3.55 to \$3.99, a rise of 12.3%. Immediately afterwards, Timber Hill entered an Order to sell 7,350 at \$1.72 ('MIN Order 2').
- Prior to the entry of MIN Order 2, the market for MIN was \$3.55/\$3.99/\$3.99.
- MIN Order 2 traded immediately in its entirety in five trades at prices from \$3.55 down to \$3.43, resulting in a decrease in the price of MIN from \$3.99 to \$3.43, a decline of 14%.
- The entry of Min Order 1 and MIN Order 2 (collectively, 'the MIN Orders') into the Trading Platform resulted in a market for MIN not being both fair and orderly, which contravened Market Rule 14.1.1, in that:
 - the Market Transactions resulting from the MIN Orders caused the price of MIN to increase by \$0.44 (12.3%) and then fall by \$0.56 (14%) within 2 seconds;
 - the MIN Orders gave rise to a market in MIN that varied significantly from other markets in MIN which existed a relatively short time before and after it;
 - trading in MIN between 10:04:30.95 and 10:04:32.36 was inconsistent with the history of, and recent trading in, MIN; and
 - there had been no announcements for MIN since 21 April 2009 and therefore no announcements which would explain an increase of 12.3% or a decrease of 14% in the price of MIN on 27 April 2009.

Contravention 6:

- At 10:06:07 on 7 May 2009, Timber Hill entered an 'at market' Order to purchase 22,150 CPR ('CPR Order'). Prior to the entry of the Order, the Bid/Ask/Last was \$0.19/\$0.20/\$0.20. The CPR Order traded immediately in its entirety in three Market Transactions, at prices ranging from \$0.20 to \$0.29.
- The trades resulting from the entry of the CPR Order into the Trading Platform resulted in a market for CPR not being both fair and orderly, which contravened Market Rule 14.1.1, in that:
 - the trades resulting from the CPR Order caused a combined price increase of \$0.09 or 45%;
 - the next trade for CPR occurred at 11:14:30.92 at a price of \$0.21 which was near the price that CPR had traded immediately before the entry of the CPR Order;
 - the CPR Order gave rise to a market in CPR that varied significantly from other markets in CPR which existed a relatively short time before and after it;
 - trading in CPR at 10:06:07.00 was inconsistent with the history of and recent trading in CPR; and
 - there were no announcements on 7 May 2009 that would explain a 45% increase in the price of CPR.

Contravention 7: ASX withdrew Contravention 7

Contravention 8:

- Between 10:02:00.07 and 15:31:39.58 on 5 June 2009, 1,764,719 EHL traded at prices from \$0.46 to \$0.50, at an average price of \$0.47.
- Between 15:31:39.80 and 15:31:39.97 on 5 June 2009, Timber Hill entered 11 Orders to purchase EHL at prices from \$0.50 to \$0.505.
- As a result, between 15:31:39.80 and 15:31:40.25 ('the First EHL Period') on 5 June 2009, Timber Hill entered into 16 Market Transactions purchasing 38,778 EHL at prices from \$0.50 to \$0.505.
- Between 15:31:40.27 and 15:31:41.23 on 5 June 2009 the price of EHL increased from \$0.50 to \$0.54 (8%) on trading by other brokers.
- Between 15:31:41.88 and 15:32:02.46 ('the Second EHL Period'), Timber Hill entered a further 19 Orders to purchase EHL at prices from \$0.55 to \$0.70 ('the EHL Orders').
- During the Second EHL Period and as a result of the EHL Orders, Timber Hill entered into 12 Market Transactions, purchasing 47,192 EHL at prices from \$0.55 to \$0.70.
- The entry of the EHL Orders into the Trading Platform resulted in a market for EHL not being both fair and orderly, which contravened Market Rule 14.1.1, in that:
 - the 12 Market Transactions entered into by Timber Hill as a result of the EHL Orders caused four price increases and a combined increase in the price of EHL of \$0.16 or 29.6% within the 21 second time period;
 - Timber Hill was the only Participant that purchased EHL during the 21 second time period;
 - the price of EHL began decreasing immediately after Timber Hill's last trade at 15:32:02.46 and at 15:35:20.88, approximately three minutes later, EHL returned to a price (\$0.54) which was near that at which it had traded prior to the trading arising from the EHL Orders;

- the EHL Orders gave rise to a market in EHL that varied significantly from other markets in EHL which existed a relatively short time before and after it;
- as a result of the entry of the EHL Orders and the resulting Market Transactions, trading during the Second EHL Period on 5 June 2009 was inconsistent with the recent history of and recent trading in EHL and with trading in EHL on 5 June 2009; and
- there were no market announcements on 5 June 2009 that would explain a 29.6% increase in the price of EHL.

Contravention 9:

- Between 10:02:18.10 and 11:03:56.14 on 9 June 2009, 16,988 CXC traded at prices from \$19.59 down to \$18.55, at an average price of \$19.15.
- Between 11:04:05 and 11:05:01 ('the Relevant CXC Period'), Timber Hill entered 97 Orders to sell CXC ('the CXC Orders').
- As a result of the CXC Orders, Timber Hill entered into 44 of the 48 Market Transactions affected during the Relevant CXC Period.
- The entry of the CXC Orders into the Trading Platform resulted in a market for CXC not being both fair and orderly, which contravened Market Rule 14.1.1, in that:
 - During the Relevant CXC Period:
 - the price of CXC decreased from \$18.55 to \$16.03, a decrease of \$2.52, or 13.6%;
 - Timber Hill sold a total volume of 7,555 CXC, which represents 71.65% of the total volume of CXC (11,082) sold during the period;
 - transactions resulting from the CXC Orders were responsible for six or 75% of the eight decreases in the price of CXC during the period; and
 - price decreases caused by transactions resulting from the CXC Orders were responsible for \$2.17 or 86.1% of the overall decrease of \$2.52 during the period; and
 - the CXC Orders gave rise to a market in CXC that varied significantly from other markets in CXC which existed a relatively short time before and after it.
 - As a result of the entry of the CXC Orders by Timber Hill and the resulting Market Transactions, trading during the Relevant CXC Period on 9 June 2009 was inconsistent with the recent history of and recent trading in CXC, and with trading in CXC on 9 June 2009, in that:
 - the CXC Orders caused a rapid and significant price decrease in CXC;
 - trading resulting from the CXC Orders created a new recent low price as CXC had not traded below \$17.10 in the month prior to 9 June 2009;
 - the intra-day price range for CXC on 9 June 2009 was \$3.56, the largest range for at least the preceding six months;
 - the price of CXC began increasing at 11:05:22.36, 34 seconds after Timber Hill's last trade at 11:04:48.90 and increased to \$18.14 at 11:49:14.96;
 - CXC subsequently traded at prices from \$17.77 to \$18.49 up until 12:58:06.75 and reached \$18.50 at 13:00:00.04, the price at which CXC was trading prior to Timber Hill's first sale; and
 - there were no market announcements on 9 June 2009 that explained a 13.6% decrease in the price of CXC.

Contravention 10:

- Timber Hill contravened Rule 13.3.1(a) between 5 March 2009 and 9 June 2009, in that it failed at all times to have in place appropriate automated filters in relation to its system for AOP.
- At all material times, Timber Hill's AOP system permitted Automated Client Order Processing ('ACOP') and therefore allowed the orders of its client to be transmitted directly to the Trading Platform.
- On 8 May 2008 and 8 October 2008, Timber Hill introduced changes to the automated filters of its ACOP system to comply with Rule 13.3.1.
- Despite these filter changes, it was alleged that the filters for Timber Hill's ACOP system between 5 March 2009 and 9 June 2009 were not appropriate in that:
 - orders entered through its ACOP system resulted in Contraventions 1 – 4, 6, and 8 – 9;
 - ITS Price Deviation Warnings, user liability alerts or other alerts were not triggered by the ACOP system in relation to any of the Orders that are the subject of Contraventions 1 – 4, 6, and 8 – 9;
 - the ACOP filters that Timber Hill had in place did not prevent the routing of any of the Orders that are the subject of Contraventions 1 – 4, 6, and 8 – 9 to the ASX Trading Platform; and
 - by reason of the ineffective filtering of Orders through its ACOP system, on seven occasions in a period of three months, Timber Hill allowed the Orders to be entered onto the Trading Platform, which caused a market for each of the relevant securities to be not both fair and orderly.