



## ASX Circular

Date: 9 December 2010

## Key topics

1. Merrill Lynch Equities (Australia) 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:

On 19 April 2010, Merrill Lynch Equities (Australia) Limited ('MLEAL') contravened ASX Market Rule 14.1.1\*, when a representative of MLEAL entered an Ask into the Trading Platform resulting in a market for the shares of REA Group Limited ('REA') which was not both fair and orderly.

For this contravention the Tribunal imposed a penalty of \$35,000 (plus GST).

MLEAL did not contest the matter before the Tribunal.

The circumstances of the matter are detailed as follows:

On 19 April 2010, a MLEAL Designated Trading Representative ('DTR') entered an Ask for 666,000 REA at \$3.00 (the 'REA Ask') into the Trading Platform during the pre-Closing Single Price Auction ('pre-CSPA') Session State. The DTR had intended to buy 660,000 shares in MAP Airports Limited ('MAP').

Immediately prior to its entry the Bid/Ask/Last for REA was \$12.39/\$12.00/\$12.15. MLEAL's system generated a warning message that the offer price was significantly different to the last market price for REA. The DTR misunderstood the alert and authorised the entry of the REA Ask.

The entry of the REA Ask into the Trading Platform resulted in a market for REA not being both fair and orderly in that:

- i. The REA Ask traded at approximately 16:10 during the Closing Single Price Auction market. This resulted in 52 Market Transactions (the 'Subsequent Trades') for the sale of a total of 323,570 REA at \$3.00; and
- ii. The price of REA as a result of the Subsequent Trades was 915 price steps or approximately 75.3% lower than the last trade price of \$12.15.

On becoming aware of the Subsequent Trades, MLEAL deleted its residual Ask for 342,430 REA at \$3.00 from the Trading Platform and sent an email to ASX Market Control requesting cancellation of the Subsequent Trades. The Subsequent Trades were referred to the Dispute Governor's Committee which recommended that the Subsequent Trades be cancelled.

ASX Market Control cancelled all of the Subsequent Trades between approximately 16:45:08 and 16:53:06.

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

- a) The significant action that MLEAL has taken since the occurrence of this contravention in upgrading its corporate governance, risk management, supervision and compliance structures;
- b) MLEAL fully cooperated with ASX in relation to the conduct of its investigation into the contravention;
- c) MLEAL agreed at an early stage not to contest the contravention thereby saving time and costs;
- d) The misconduct was unintentional;

- e) MLEAL self-reported the misconduct in a timely manner;
- f) The disciplinary history of MLEAL, having been sanctioned on numerous occasions since 2002 (including that the contravention of Market Rule 14.1.1 was a repeat contravention);
- g) The misconduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates; and
- h) The remedial measures MLEAL has implemented to prevent any recurrence of the contravening conduct, including:
  - substantial changes to the MLEAL order entry system to prevent the occurrence of a similar error;
  - an analysis to identify any other possible controls to make the system more robust; and
  - mandatory revision training for all DTRs.

The Tribunal noted:

The importance of the strict obligation imposed on Market Participants by ASX Market Rule 14.1.1, which requires that Participants do not do anything that results in a market for a Product that is not both fair and orderly.

The entry of the orders had a considerable impact on the Closing Single Price Auction market for the relevant Product and necessitated the involvement of the Dispute Governors Committee which led to a number of trade cancellations.

The breach of ASX Market Rule 14.1.1 resulted from the actions of a DTR that misunderstood the warning message generated by internal MLEAL systems. The misconduct was, however, inadvertent and the result of the employee's genuine mistake.

#### Annexure A - Disciplinary Tribunal Sanction Guidelines

The Tribunal had regard to the Disciplinary Tribunal Sanction Guidelines contained in Annexure A to the Disciplinary Appeals and Processes Rulebook.

The Tribunal determined that this contravention was a Level 2 Serious Contravention, for which the applicable penalty range is \$20,000 - \$100,000 (plus GST). Given the aggravating and mitigating circumstances in this matter the Tribunal determined that a fine of \$35,000 (plus GST) is an appropriate sanction

An important function of the ASX and the Market Rules is to maintain the reputation and integrity of the market. The Tribunal is satisfied that the imposition of this sanction appropriately serves the purposes of protecting the interests of ASX and its participating organisations, and of promoting confidence in the integrity of the markets. This sanction will serve as a deterrent to MLEAL and other market participants.

\*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.