



## ASX Circular

Date: 28 September 2011

## Key topics

1. BBY Limited

## Reading List

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

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## DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal (the 'Tribunal') has imposed a fine of \$65,000 (plus GST) on BBY Limited ('BBY') for failing to prevent the submission of Trading Messages by its automated order processing (AOP) system and from manual orders that interfered with the efficiency and integrity of the market.

BBY contravened the following ASX Market Rules\* between 16 September 2008 to 26 November 2008 ('the Relevant Period') in relation to trading in the fully paid ordinary shares of Ashburton Minerals Limited ('ATN'), Navigator Resources Limited ('NAV'), Royal Resources Limited ('ROY'), and Thundelarra Exploration Limited ('THX') by one of its direct market access clients (who is the holder of an Australian financial services licence) ('the Client'):

- a) ASX Market Rule 13.1.5(a)(i) and, thereby, ASX Market Rule 13.1.4(a), in failing to have in place and maintain the necessary organisational and/or technical resources to ensure that the Trading Messages it submitted in respect of 24 Orders entered by the Client and considered by its Designated Trading Representatives ('DTRs') ('the Manual Orders') did not interfere with the efficiency and integrity of the market in respect of NAV, ROY and THX (Contravention 1);
- b) ASX Market Rule 13.3.1(a) in that it failed to comply with the Operational Requirements in relation to Automated Order Processing so as to have and maintain the necessary organisational and/or technical resources (including appropriate automated filters) to ensure that the Trading Messages submitted through its Automated Order Processing ('AOP') system in respect of 73 Orders entered by the Client ('the AOP Orders') did not interfere with the efficiency and integrity of the market in respect of ATN, NAV, ROY and THX (Contravention 2); and
- c) ASX Market Rule 13.3.1(b) in that it failed, in respect of the AOP Orders, to ensure that its AOP system did not interfere with the efficiency and integrity of the market in respect of ATN, NAV, ROY and THX (Contravention 3).

BBY did not contest the contraventions before the Tribunal.

The circumstances of the matter are detailed as follows:

- 1.1 The efficiency and integrity of a market refers to the ability of investors to transact in a fair and informed market where prices reflect genuine supply, demand and information.
- 1.2 The submission of Trading Messages associated with the 24 Manual Orders and the 73 AOP Orders interfered with the efficiency and integrity of the market in ATN, NAV, ROY or THX as follows:

- 1.2.1. each Relevant Order had a material impact on the price of and/or the market for ATN, NAV, ROY or THX;
  - 1.2.2. persons observing the market in ATN, NAV, ROY or THX or wishing to invest in ATN, NAV, ROY or THX could not have been confident that the post transaction prices of ATN, NAV, ROY or THX were a genuine reflection of supply, demand and information.
- 1.3 In respect of the Manual Orders, BBY contravened ASX Market Rules 13.1.5(a)(i) and 13.1.4(a) in that it:
- 1.3.1. failed to put in place adequate arrangements to prevent trading by the Clients that might interfere with the efficiency and integrity of the market in NAV, ROY or THX;
  - 1.3.2. failed to adequately ensure that its DTRs and other personnel would not submit or allow to be submitted on to the Trading Platform, Trading Messages in respect of Orders by the Client in NAV, ROY or THX that might interfere with the efficiency and integrity of the equities market in respect of NAV, ROY or THX;
  - 1.3.3. through its DTRs, submitted or allowed to be submitted on to the Trading Platform, Trading Messages which did interfere with the efficiency and integrity of the market in respect of NAV, ROY or THX;
  - 1.3.4. failed to act during the course of the Relevant Period by reviewing or modifying its relevant organisational and/or technical resources when it knew or ought to have known that the trading by the Client had interfered with the efficiency and integrity of the market in respect of NAV, ROY or THX;
- 1.4 In respect of the AOP Orders, BBY contravened ASX Market Rule 13.3.1(a) and 13.3.1(b) in that it:
- 1.4.1. failed to put in place adequate arrangements to prevent trading by the Client through its AOP system that might interfere with the efficiency and integrity of market in respect of ATN, NAV, ROY or THX;
  - 1.4.2. failed to adequately ensure that its automated filters or other technical and/or organisational resources would identify Orders by the Client which could or would interfere with the efficiency and integrity of the market in respect of ATN, NAV, ROY or THX;
  - 1.4.3. through its AOP system submitted or allowed to be submitted on to the Trading Platform Trading Messages which did interfere with the efficiency and integrity of the market in respect of ATN, NAV, ROY or THX;
  - 1.4.4. failed to act during the course of the Relevant Period by reviewing or modifying its relevant organisational and/or technical resources when it knew or ought to have known that the trading by the Clients had interfered with the efficiency and integrity of the market in respect of ATN, NAV, ROY or THX;

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

- (i) BBY fully co-operated with ASX in relation to its investigation into the matter;
- (ii) BBY agreed at an early stage not to contest the Contraventions, thereby saving time and costs;
- (iii) the total value of the Orders to which the breaches related was less than \$120,000;
- (iv) the significant remedial action taken by BBY to prevent a recurrence of the contraventions including:
  - overriding market manipulation filters in place by reason of its Smart Broker Surveillance system;

- implementing an Autodenial filter; and
  - conducting a review of all DMA clients and implementing filters and continues to review these filters as part of BBY's Compliance Monitoring and Testing Programme;
- (v) the disciplinary history of BBY is an aggravating factor in that BBY has been sanctioned by the Disciplinary Tribunal on three occasions since 2007. However, there have been no other determinations by the Tribunal involving BBY and a contravention of ASX Market Rules 13.1.5, 13.1.4 or 13.3.1;
- (vi) the importance of DTRs in taking particular care and attention with respect to warning messages;
- (vii) the contravening conduct occurred for over three months; and
- (viii) the relevant conduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates.

### Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal was bound by the sanction guidelines (Annexure A to the Rulebook) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the contravention of the ASX Market Rules was appropriately classified as a Level 2 (Serious Contravention), for which the applicable penalty range is \$20,000 - \$100,000 (plus GST).

The Tribunal considered the aggravating and the mitigating circumstances in each contravention.

Given the aggravating and mitigating circumstances in this matter, the Tribunal determined that the total fine of \$65,000 (plus GST) for both contraventions represents an appropriate sanction in the circumstances.

The Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and Market Participants in maintaining a market that is fair, orderly and transparent.

\* 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.