

ASX Circular

Date: 5 October, 2007

Key topics

1. IMC Pacific Pty Ltd

Reading List

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

Contact

Jodie Maurer

Telephone

(02) 9227 0472

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>

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DISCIPLINARY MATTERS

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

IMC Pacific Pty Ltd ("IMC") has been fined a total of \$70,000 plus GST in respect of the following contraventions:

- ASX Market Rules 13.1.3 and 13.2.2 between 1 October 2006 and 25 January 2007 in that IMC, a Trading Participant, failed to ensure that all trading in a Trading Platform was carried out in accordance with the Dealing Rules and either by a Designated Trading Representative ("DTR"), or in accordance with Automated Order Processing ("AOP") requirements.
- ASX Market Rule 13.2.1 between 22 January 2007 and 25 January 2007 in that IMC, as a Trading Participant, failed to have at least one DTR in respect of any one or more Products for which IMC had Trading Permission.
- ASX Market Rule 13.3.4(a) between 11 March 2004 and 25 January 2007, in that, before using their specific systems for AOP, IMC, as a Trading Participant, failed to provide certification from an appropriately qualified person.
- ASX Market Rule 4.19.1 on 24 January 2007 in that IMC failed to ensure that all information which its employee gave to ASX was complete, accurate and not misleading, and to promptly notify ASX in writing when it became aware that information which its employee had previously given to ASX was inaccurate.

IMC elected not to contest the contraventions before the Tribunal.

In determining the sanction, the Tribunal took into account the following matters:

- (a) The circumstances and facts of the matter, and the seriousness of the contraventions;
- (b) IMC fully co-operated with ASX Investigations in the investigation of the matter and elected not to contest the matter;
- (c) The remedial actions since undertaken by IMC to address the issue and to prevent any future reoccurrence. The actions included issuing warning and reprimand letters to those employees that provided inaccurate information to ASX and those who entered trades without proper DTR certification, and placing the relevant employee on a probation period;
- (d) IMC voluntarily undertook to obtain an external review of its compliance procedures and protocols and to revise its compliance manual, where appropriate;
- (e) IMC, on its own accord, commenced half-yearly employee education and training seminars to cover, amongst other things, the importance of providing complete and accurate information to ASX and the obligations of DTRs;
- (f) IMC has not been the subject of any prior matters before the Tribunal;
- (g) IMC acknowledged the seriousness of the matter and has expended significant costs to address the matters raised by ASX; and

(h) No clients or third parties directly suffered financial loss as a result of the matter.

The circumstances of the matter are detailed as follows:

On 24 January 2007 ASX contacted IMC by telephone and requested to speak to the IMC DTR who had logged onto the Trading Platform that morning. An IMC employee advised ASX that the DTR had been in the office that morning and had logged on before going home ill.

The information and advice provided to ASX was later acknowledged by IMC as being inaccurate on the basis that the DTR had not been in the office in the morning. ASX understood from the information provided that the DTR had logged onto the Trading Platform that morning.

IMC's only DTR during the relevant period had tendered a resignation notice on 22 December 2006 with the DTR's last day of employment being 19 January 2007. The DTR had not been present at IMC's office since 27 December 2006, apart from 18 January 2007, when a hand-over of work was conducted. IMC did not have a DTR at all from 22 January to 25 January 2007.

It is ascertained that certain IMC employees, who were not registered as DTRs, had been using the login details of the DTR to enter orders into the Trading Platform. A total of 18 orders were identified as having been entered into the Trading Platform on 9, 18 and 23 January 2007 by IMC employees who were not DTRs. IMC also confirmed that there may have been other occasions where IMC employees, who were not DTRs, had used the password of the DTR to enter cancel orders.

It was further identified that prior to, and from at least 11 March 2004 through to 25 January 2007, IMC has been using uncertified versions of AOP systems. IMC subsequently submitted (and obtained) certification for its AOP systems.

The placement of orders into the Trading Platform by non-DTRs, the operation of two uncertified AOP systems for a period of over two years, and the provision of inaccurate information to the ASX are matters of serious concern to the Tribunal.

The requirements under the Rules that only DTRs can enter Trading Messages into the Trading Platform, and the obligations upon Trading Participants to provide certification prior to use and operation of AOP systems, are important measures which facilitate the conduct of an orderly market.