



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

MDP 03/17, Thursday, 23rd February 2017

Published by ASIC

ASIC Gazette

Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: BGC Partners (Australia) Pty Limited

The recipient has complied with the infringement notice. Compliance is not an admission of guilt or liability; and the recipient is not taken to have contravened subsection 798H(1) of the *Corporations Act 2001*.

ISSN 1445-6060 (Online version)
ISSN 1445-6079 (CD-ROM version)

Available from www.asic.gov.au
Email gazette.publisher@asic.gov.au

© Commonwealth of Australia, 2017

This work is copyright. Apart from any use permitted under the *Copyright Act 1968*, all rights are reserved. Requests for authorisation to reproduce, publish or communicate this work should be made to: Gazette Publisher, Australian Securities and Investment Commission, GPO Box 9827, Melbourne Vic 3001



PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: BGC Partners (Australia) Pty Limited
Level 24
357-363 George Street
SYDNEY NSW 2000

Matter: MDP 798/16
Date given: 25 January 2017

TAKE NOTICE: The Australian Securities and Investments Commission (“ASIC”) gives this infringement notice to BGC Partners (Australia) Pty Limited (“BGC”) under regulation 7.2A.04 of the Corporations Regulations 2001 (“Regulations”).

To comply with this notice BGC must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$90,000**.

Unless a contrary intention appears, capitalised terms used in this notice have the same meaning as those defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX 24 Market) 2010 (“the Rules”) as in force at the time of the conduct.

Details of the alleged contraventions

1. BGC was a Market Participant in the ASX 24 Market operated by ASX at the relevant time and was required by subsection 798H(1) of the *Corporations Act 2001* (“the Act”) to comply with the Rules.

2. Rule 3.3.1A(1) of the Rules provided:

If counterparties have been solicited by a Market Participant pursuant to Rule 3.3.1(1)(a), the Market Participant must:

- (a) make an enquiry through the message facility of the Trading Platform for a market in that contract month or strategy;
- (b) wait until the period of time prescribed by the Market Operator in the Marketing Operating Rules, or in the procedures to the Market Operating Rules, has elapsed since the entry of the enquiry, or if no such time is prescribed, 30 seconds; and
- (c) then immediately enter the Order on the Trading Platform for execution.

3. Rule 3.3.2 of the Rules provided:

Before entering a pre-negotiated business Order on behalf of a Client under Rule 3.3.1, a Market Participant must be authorised In Writing by the Client to do so either specifically or generally. The authorisation must state that the Client authorises Orders to be pre-negotiated on the Client's behalf.

4. The Markets Disciplinary Panel ("MDP") has reasonable grounds to believe that BGC contravened Rules 3.3.1A(1) and 3.3.2 and thereby contravened subsection 798H(1) of the Act in respect of the following conduct:

Alleged contravention 1

- (a) on 18 March 2016, BGC had a series of telephone conversations with Client 1 and Client 2 which resulted in pre-negotiated business between those Clients in relation to specific electricity futures contracts;
- (b) the pre-negotiated business was transacted on the ASX 24 Market as follows:
 - (i) BGC, on behalf of Client 1, entered an Order to buy 10 lots of 10 March 2017 VIC Base Load Quarterly Futures Contracts ("BVH7") at 45.5 and sell 10 lots of 10 March 2017 VIC Base Load Quarterly \$300 Cap Futures Contracts ("GVH7") at 7.5;
 - (ii) at the same time, BGC, on behalf of Client 2, entered an Order to sell 10 lots of BVH7 at 45.5 and buy 10 lots of GVH7 at 7.5;
 - (iii) the respective Orders on behalf of Clients 1 and 2 immediately resulted in a Trade at the pre-negotiated prices and volumes;
- (c) before submitting the respective Orders, BGC did not make an enquiry through the message facility of the Trading Platform as required by Rule 3.3.1A(1)(a) ("alleged contravention 1");

Alleged contraventions 2 and 3

- (d) on 23 March 2016, BGC had a series of telephone conversations with Client 1 and Client 3 which resulted in pre-negotiated business between those Clients in relation to specific electricity futures contracts;
- (e) the pre-negotiated business was transacted on the ASX 24 Market as follows:
 - (i) BGC, on behalf of Client 1, entered an Order to buy 15 lots of 15 June 2016 VIC Peak Load Quarterly Futures Contracts ("PVM6") at 51.82 and sell 15 lots of 15 June 2016 VIC Base Load Quarterly Futures Contracts ("BVM6") at 41.85;
 - (ii) at the same time, BGC, on behalf of Client 3, entered an Order to sell 15 lots of PVM6 at 51.82 and buy 15 lots of BVM6 at 41.85;
 - (iii) these respective Orders on behalf of Clients 1 and 3 immediately resulted in a Trade at the pre-negotiated prices and volumes.

- (f) before submitting the respective Orders, BGC did not make an enquiry through the message facility of the Trading Platform as required by Rule 3.3.1A(1)(a) (“alleged contravention 2”);
- (g) in response to ASIC’s request to produce the written authorisation to conduct pre-negotiated business on behalf of Client 3 as required under Rule 3.3.2, BGC was not able to locate the written authorisation (“alleged contravention 3”);

Alleged contraventions 4, 5 and 6

- (h) on 26 July 2016, following pre-negotiated business on behalf of Client 4 and Client 5 in relation to put options over bond futures, BGC made an enquiry through the message facility of the Trading Platform in accordance with Rule 3.3.1A(1) for a proposed Order comprising the following three strikes in September 2016 Put Options on Three Year Commonwealth Treasury Bond Futures Contracts: 98300 (“YTU698300P”), 98499 (“YTU698400P”) and 98500 (“YTU698500P”);
 - (i) having waited the required time in accordance with Rule 3.3.1A(1)(b), BGC executed the pre-negotiated business on the ASX 24 Market by, on behalf of Client 4, entering an Order to sell 2,000 lots of the put options and, on behalf of Client 5, entering an Order to buy 2,000 lots of the put options, which resulted in Trades for each of the put options at the pre-negotiated prices and volumes;
 - (j) subsequently on the same day, BGC received further interest from Client 4 to sell another 2,000 lots in the same put options but was only able to pre-negotiate a match for 1,000 lots with Client 6;
 - (k) the pre-negotiated business was transacted on the ASX 24 Market as follows:
 - (i) BGC, on behalf of Client 4, entered an Order to sell 1,000 lots of the put options and, 47 seconds later, on behalf of Client 6, entered an Order to buy 1,000 lots of the put options;
 - (ii) these respective Orders on behalf of Clients 4 and 6 resulted in a Trade at the pre-negotiated prices and volumes.
 - (l) before submitting these respective Orders, BGC did not make an enquiry through the message facility of the Trading Platform as required by Rule 3.3.1A(1), despite 47 seconds having elapsed between the entry of the Orders (“alleged contravention 4”);
 - (m) BGC did not have the required written authorisation for it to enter into pre-negotiated business on behalf of Client 4 as required by Rule 3.3.2 in respect of the pre-negotiated business with Clients 5 and 6 respectively (“alleged contraventions 5 and 6”).
5. In considering this matter and the appropriate penalty, the MDP commented:

- (a) BGC's failure to make enquiries through the message facility of the Trading Platform of the ASX 24 Market in accordance with Rule 3.3.1A(1) was careless. No internal warnings, risk management filters or other alerts were received in relation to the trading of the electricity futures contracts on 18 and 23 March 2016. BGC also failed to promptly check SMARTS alerts that would have alerted them to the failure. The careless conduct detrimentally affected the fairness of the market by denying other Market Participants the opportunity to take the other side of the Orders, and reduced transparency in the market by not providing pre-trade information. The panel considered the trading in question was unlikely to have had a material impact on retail investors;
 - (b) BGC's assumption that written authorisations for pre-negotiated business were in place for Client 3 and 5 respectively, when in fact they were not in place, was also careless. BGC had other agreements in place with these Clients, but it did not have written authorisations for pre-negotiated business;
 - (c) BGC obtained a financial benefit from pre-negotiating and executing both sides of the Trades resulting from the relevant transactions;
 - (d) BGC did not self-report the conduct that occurred on 18 and 23 March 2016 in relation to the trading of the electricity future contracts but promptly self-reported the conduct that occurred on 26 July 2016 in relation to the trading of the put options over bond futures;
 - (e) BGC co-operated with ASIC throughout the investigation and did not dispute any material facts. Further, the misconduct did not result in any complaints;
 - (f) The previous regulatory record of BGC in relation to market integrity or market conduct rules includes:
 - (i) one infringement notice issued by the MDP in 2012 in relation to contravening Rule 3.1.8 (prohibition against withholding an Order to obtain a counterparty) and Rule 3.1.11 (trading to the exclusion of others) of the Rules, where the MDP characterised BGC's conduct as intentional (MDP08/12); and
 - (ii) one sanction by the ASX Disciplinary Tribunal in 2010 for, among other things, contravening the requirement to send a request for quote on eight occasions (373/10).
6. The MDP considers that the penalty for alleged contravention 4 should be lower than the respective penalties for alleged contraventions 1 and 2. Firstly, having regard to the fact that 47 seconds had elapsed between the entering of the Orders, other Market Participants had some opportunity to take the other side of the Orders. This was not the case for the conduct giving rise to alleged contraventions 1 and 2. Secondly, alleged contravention 4 was promptly self-reported by BGC. The MDP considers the self-report as a mitigating factor towards penalty in this matter.
7. The MDP considers that the conduct giving rise to alleged contraventions 5 and 6 were based on the same mistaken assumption by BGC that it had written authorisation to

enter pre-negotiated business on behalf of Client 4 and that the trades giving rise to those contraventions occurred on the same day. Accordingly, there is no additional penalty for alleged contravention 6.

8. The appropriate penalty for each alleged contravention of subsection 798H(1) of the Act is:

Alleged Contravention	Rule	Penalty
1	3.3.1A(1)	\$20,000
2	3.3.1A(1)	\$25,000
3	3.3.2	\$25,000
4	3.3.1A(1)	\$10,000
5	3.3.2	\$30,000
6	3.3.2	Nil

9. Having regard to the totality of the conduct to ensure that the combined penalty is not excessive, the MDP specified the penalty payable for each alleged contravention of subsection 798H(1) of the Act is:

Alleged Contravention	Rule	Penalty
1	3.3.1A(1)	\$16,000
2	3.3.1A(1)	\$21,000
3	3.3.2	\$21,000
4	3.3.1A(1)	\$6,000
5	3.3.2	\$26,000
6	3.3.2	Nil

10. The total penalty payable for all contraventions of subsection 798H(1) of the Act is \$90,000.

Other information

The maximum pecuniary penalty that a Court could order BGC to pay for contravening subsection 798H(1) of the Act by contravening Rule 3.3.1A(1) and Rule 3.3.2 is \$100,000 for each rule. The maximum pecuniary penalty that may be payable by BGC under an infringement notice in relation to each alleged contravention of Rule 3.3.1A(1) or Rule 3.3.2 is \$60,000 for each rule.

To comply with this infringement notice, BGC must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to BGC and ends 27 days after the day on which it is given. Payment is made by bank cheque to the order of "Australian Securities and Investments Commission".

The effects of compliance with this infringement notice are:

- (a) any liability of BGC to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged; and
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against BGC for the conduct specified in the infringement notice

- as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act; and
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against BGC for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act; and
 - (d) BGC is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
 - (e) BGC is not taken to have contravened subsection 798H(1) of the Act.

BGC may choose not to comply with this infringement notice, but if BGC does not comply, civil proceedings may be brought against it in relation to the alleged contravention.

BGC may apply to ASIC for withdrawal of this infringement notice under regulation 7.2A.11 of the Regulations; and for an extension of time to comply under regulation 7.2A.09 of the Regulations.

ASIC may publish details of this notice under regulation 7.2A.15 of the Regulations.



Findley Hipkin

Lawyer, Markets Disciplinary Panel
with the authority of a Division of ASIC

Note: Members of the Markets Disciplinary Panel constitute a Division of ASIC as delegates of the members of the Division for the purposes of considering the allegations covered by this notice.