



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

No. MDP08/12, Tuesday, 4 December 2012

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.

RIGHTS OF REVIEW

Recipients affected by the decision of the Markets Disciplinary Panel to give them an infringement notice under subsection 798H(1) of the *Corporations Act 2001* and Part 7.2A of the *Corporations Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn. ASIC has published RG 216 to assist recipients to determine whether they have such rights – see RG 216.71 and RG 216.77 to 216.79. Copies of this document can be obtained from the ASIC website at www.asic.gov.au

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

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PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To:

BGC Partners (Australia) Pty Limited
Level 24, 363 George Street
SYDNEY NSW 2000

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to BGC Partners (Australia) Pty Limited, ACN 092 873 099 ("BGC") under regulation 7.2A.04 of the *Corporations Regulations 2001* ("the Regulations"). To comply with this notice BGC must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of
\$45,000

This infringement notice is given on 30 October 2012.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP12/16893.

Alleged contravention and penalty

BGC was a participant in the market operated by the Australian Securities Exchange Limited (formerly known as the Sydney Futures Exchange Limited) and was therefore an entity required by subsection 798H(1) of the *Corporations Act 2001* ("the Act") to comply with the market integrity rules at that time.

BGC is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 3.1.8 and 3.1.11 of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* ("MIR 3.1.8 and MIR 3.1.11").

MIR 3.1.8 relevantly provides:

"Withholding Orders

Subject to Rules 3.3.1(1)(a) and 3.4.1(b), a Market Participant must not withhold an Order with an intention to obtain a counterparty or counterparties."

MIR 3.1.11 relevantly provides:

"Trading to the Exclusion of Others

A Market Participant must not execute or attempt to execute Trades with the intent to exclude other Market Participants or their Representatives"

On the evidence before it, ASIC's Markets Disciplinary Panel was satisfied that:

- 1) On 27 January 2011, at 16:14:49 a BGC Representative received orders ("Relevant Order") from an institutional client to:
 - (a) Sell 480 March 2011, Ten Year Commonwealth Treasury Bond Futures ("XTH1") on account of one client account ("the Sell"); and
 - (b) Buy 480 XTH1 on account of another client account ("the Buy").
- 2) At the time of receipt of the Relevant Order confirmation at 16:14:49, the Market in the XTH1 contracts was liquid, with the volume of bids and asks in the hundreds. The spread between the bids and asks in the Market was between 94.45 and 94.46, with a significant majority of trades being executed at 94.455.
- 3) The BGC Representative rather than immediately enter the Relevant Order separately on the Market on receipt of the confirmation at 16:14:49, withheld the entry for approximately one minute and twenty-five seconds, until 16:16:13, when the volume of bids and asks in the XTH1 contracts market had significantly reduced in order to enable the Buy and the Sell to transact with one another and 'cross up' as many contracts as possible.
- 4) At about 16:16:13, the BGC Representative entered on the Market the Sell at 94.455 and the Buy at 94.455 and resulted in:
 - (a) the Sell transacting immediately with six existing orders in the market for a total of 75 lots; and
 - (b) the Buy then transacted with the Sell for 405 XTH1 at 94.455 to complete the Sell.
- 5) The Buy then transacted with two other orders at 94.455 in the Market to complete the Buy.
- 6) The XTH1 contract was not a product permitted to be traded as pre-negotiated business on the Market. Thereby, the exception in MIR 3.1.8 of MIR 3.3.1(1)(a) was not available to the XTH1 contracts and thereby to the Relevant Order.
- 7) A Block Trade Order in the XTH1 contracts was only permitted for orders with a minimum volume of 750 lots. The Relevant Order was for a volume of 480 lots, thereby the exception in MIR 3.1.8 of MIR 3.4.1(b) also was not available.
- 8) The BGC Representative could and should have immediately entered on the Market the Buy and Sell at 16:14:49, on receipt of the order confirmation.
- 9) BGC, by the entry on the Market of the Buy and the Sell less than a second apart, and at a point in the XTH1 market where the maximum number of contracts would trade with

each other, led to the exclusion of other Market Participants from participating as counterparty to the Buy or the Sell.

By reason of BGC's entry on the Market of the Buy and Sell at 16:16:14 on 27 January 2011, the Markets Disciplinary Panel has reasonable grounds to believe that BGC contravened Rules 3.1.8 and 3.1.11 of the MIRs and thereby contravened subsection 798H(1) of the Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order BGC to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening Rule 3.1.8 of the MIRs is \$1,000,000; and
- by reason of contravening Rule 3.1.11 of the MIRs is \$100,000.

The maximum pecuniary penalty that the MDP could require BGC to pay:

- by reason of contravening Rule 3.1.8 of the MIRs is \$600,000; and
- by reason of contravening Rule 3.1.11 of the MIRs is \$60,000.

Penalty under the Infringement Notice

The penalties payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act are as follows:

- Rule 3.1.8 - \$40,000;
- Rule 3.1.11 - \$5,000.

The total penalty that BGC must pay to the Commonwealth is \$45,000.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

In determining the appropriate penalty in this matter ASIC's Markets Disciplinary Panel took into account all relevant guidance in ASIC Regulatory Guide 216 and noted in particular the following:

- MIR 3.1.8 and 3.1.11 are aimed at ensuring a fair, open and transparent trading system, with a strict obligation imposed on Market Participants to not withhold orders and not to trade to the exclusion of others.
- The misconduct had the potential to damage the reputation and integrity of the Market in the XTH1 contracts as the BGC Representative:
 - had accepted opposing Buy and Sell orders;
 - did not submit the Buy and the Sell orders onto the Market at the time of Order confirmation at 16:14:49, when the Market in the XTH1 contracts was liquid and the buy and sell spread was between 94.45 and 94.46;

- subsequently entered on the Market at about 16:16:13 the Buy and the Sell, less than one second apart, at a time when the volume of bids and asks in the XTH1 contracts had significantly reduced, which enabled the majority of the volume of the Buy and Sell to transact with one another i.e. cross and thereby potentially precluding other participants from participating in either the Buy or the Sell.
- The breach was intentional;
- The serious nature of the breach;
- BGC did not self report the breach to ASIC;
- There was actual or potential damage to a third party;
- Breach was an isolated breach that involved one course of conduct that resulted in a breach of two MIRs;
- BGC has co-operated with ASIC in its investigation by way of engagement with ASIC;
- BGC subsequently undertook the following remedial measures to prevent recurrence;
 - implemented a surveillance monitoring system;
 - revised its surveillance and monitoring policies and procedures;
 - conducted training of its Representatives; and
 - recruited an additional compliance resource.
- BGC has no previous contraventions found against it by the MDP; and
- BGC agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

Compliance with the Infringement Notice

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

To comply with this infringement notice, BGC must pay the penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to BGC; and
- (b) ends 27 days after the day on which the infringement notice is given to BGC;

unless an application is made for its extension.

BGC may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If BGC does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If BGC applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- (a) 28 days after the day on which the infringement notice was given to BGC; and
- (b) 7 days after the notice of refusal is given to BGC.

BGC may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If BGC does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to BGC.

Effect of issue and compliance with the Infringement Notice

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 contravention 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 contravention of subsection 798H(1) of the Act; and
- (d) BGC is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) BGC is not taken to have contravened subsection 798H(1) of the Act.

Publication

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



Susan Humphreys

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities & Investments Commission

Dated: 30 October 2012