Markets Disciplinary Panel

4 December 2012 **MDP CIRCULAR 2012–08**

DISCIPLINARY MATTER – BGC Partners (Australia) Pty Limited

BGC Partners (Australia) Pty Limited ("BGC") has paid a penalty of **$45,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP") for intentionally withholding the entry of Buy and Sell orders into the ASX 24 Market to enable them to transact with one another, which potentially precluded other participants from participating as counterparty to the orders.

Background and circumstances

BGC is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("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, the MDP 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 MDP had reasonable grounds to believe that BGC contravened MIR 3.1.8 and MIR 3.1.11, 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 MIR 3.1.8 is $1,000,000; and
- by reason of contravening MIR 3.1.11 is $100,000.

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

- by reason of contravening MIR 3.1.8 is $600,000; and
- by reason of contravening MIR 3.1.11 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:

- MIR 3.1.8 – $40,000; and
- MIR 3.1.11 – $5,000.

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

Relevant factors

In determining the appropriate penalty in this matter the MDP took into account all relevant guidance in ASIC Regulatory Guide 216 *Markets Disciplinary Panel* 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 precluded 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;

- The breach was an isolated breach that involved one course of conduct that resulted in a breach of two market integrity rules;
- 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 had 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.

The Markets Disciplinary Panel

The MDP is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the *Corporations Regulations 2001* ("the Regulations").

Additional regulatory information

Pursuant to subparagraph 7.2A.15(4)(b)(i) and (ii) of the Regulations, BGC has complied with the infringement notice, such compliance is not an admission of guilt or liability, and BGC is not taken to have contravened subsection 798H(1) of the Act.

Further information on market integrity infringement notices, the market integrity rules or the MDP is available in Regulatory Guide 216 *Markets Disciplinary Panel* and Regulatory Guide 225 *Markets Disciplinary Panel Practices and Procedures* or at http://www.asic.gov.au under "markets– supervision", "markets–market integrity rules" and "Markets Disciplinary Panel".