

DISCIPLINARY MATTER – ICAP Futures (Australia) Pty Ltd

ICAP Futures (Australia) Pty Ltd ("ICAP") has paid a total penalty of **\$50,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for:

- executing trades with the intent to exclude other participants or their representatives, on two separate occasions; and
- failing to make an enquiry through the message facility and wait the prescribed period prior to executing trades.

Background and circumstances

ICAP is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Corporations Act") by reason of contravening Rules 3.1.11 and 3.3.1A(1) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 3.1.11" and "MIR 3.3.1A(1)").

MIR 3.1.11 provides:

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

MIR 3.3.1A(1) commenced on 4 May 2013 and relevantly provides:

'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 Market 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.'*

On the evidence before it, the MDP was satisfied that:

Relevant Day One

- 1) On 19 March 2013, at approximately 10:22:19, an ICAP Employee ("Employee 1") contacted an ICAP Client ("Client 1") to enquire whether Client 1 was interested in buying June 2013 ASX 24 d-cypha NSW Base Load \$300 Cap Electricity Futures Contracts ("GNM3"). Client 1 expressed interest in buying GNM3.
- 2) At approximately 10:31:28, a second ICAP Employee ("Employee 2") contacted a second ICAP Client ("Client 2") and told Client 2 that ICAP had interest in GNM3 at \$1.45.

- 3) At approximately 10:31:53, Client 2 placed an Order with Employee 2 to sell nine GNM3 at \$1.45.
- 4) At approximately 10:32:26, Employee 1 told Client 1 that they could trade at \$1.45. Client 1 agreed.
- 5) At approximately 10:32:44, Employee 1 submitted an Order onto the Trading Platform to buy nine GNM3 at \$1.20 on behalf of Client 1.
- 6) At approximately 10:33:08, Employee 1 submitted an Order onto the Trading Platform to sell nine GNM3 at \$1.80 on behalf of Client 2.
- 7) At approximately 10:33:21, Employee 1 entered an inactive Order on ICAP's order system to sell nine GNM3 at \$1.45 on behalf of Client 2.
- 8) At approximately 10:33:33, Employee 1 entered an inactive Order on ICAP's order system to buy nine GNM3 at \$1.45 on behalf of Client 1.
- 9) At approximately 10:33:57, Employee 1 simultaneously activated these two Orders, sending them to the Trading Platform and resulting in a trade for nine GNM3 at \$1.45 with ICAP acting as buyer on behalf of Client 1 and seller on behalf of Client 2 ("Relevant Trade One").
- 10) ICAP did not make an enquiry through the message facility of the Trading Platform and wait the period set out in ASX 24 Operating Rule Procedure 4401.3 prior to entering the Orders which resulted in Relevant Trade One.
- 11) On 17 April 2013, ICAP notified ASIC Misconduct and Breach Reporting of its failure to comply with ASX 24 Operating Rule Procedure 4401.3 prior to Relevant Trade One. ICAP's notification did not make reference to a potential breach of Rule 3.1.11.

Relevant Day Two

- 12) On 7 August 2013, at approximately 14:39:33, an ICAP Employee ("Employee 3") contacted an ICAP Client ("Client 3") to enquire whether Client 3 was interested in buying a call option. Client 3 said that he would be interested in buying the call option with a delta hedge selling six Calendar 2015 ASX 24 Queensland Base Load Electricity Strip Futures Contracts ("HQZ5") at \$56.20.
- 13) At approximately 14:43:18, another ICAP employee ("Employee 4") contacted another ICAP Client ("Client 4") to enquire whether Client 4 was interested in selling the call option and buying six HQZ5 at \$56.20 as a delta hedge.
- 14) At approximately 14:52:39, Client 4 informed Employee 4 that he would buy six HQZ5 at \$55.75. At approximately 15:08:00, Client 4 amended his instruction to give ICAP discretion, which amendment was at the request of Employee 4.
- 15) At approximately 15:08:47, Employee 3 contacted Client 3 to discuss the trade and disclosed the price at which Client 4 was willing to trade.
- 16) At approximately 15:08:57, Employee 4 placed an Order onto the Trading Platform to buy six HQZ5 at \$55.25 on behalf of Client 4.
- 17) At approximately 15:12:06, Client 3 confirmed to Employee 3 that he would buy the call option and sell six HQZ5 at \$55.75 as a delta hedge. At Employee 3's request, Client 3 made this an Order with discretion.
- 18) At approximately 15:13:41, Employee 3 entered an Order onto the Trading Platform to sell five HQZ5 at \$57.10 on behalf of Client 3.

- 19) At approximately 15:14:39, Employee 3 entered an inactive Order on ICAP's order system to sell six HQZ5 at \$55.75 on behalf of Client 3.
- 20) At approximately 15:15:27, Employee 3 entered an inactive Order on ICAP's order system to buy six HQZ5 at \$55.75 on behalf of Client 4.
- 21) At approximately 15:16:31, Employee 3 simultaneously activated these two Orders, sending them to the Trading Platform and resulting in a trade for six HQZ5 at \$55.75 with ICAP acting as buyer on behalf of Client 4 and seller on behalf of Client 3 ("Relevant Trade Two").
- 22) ICAP did not make an enquiry through the message facility of the Trading Platform and wait the prescribed period as set out in Rule 3.3.1A(1) prior to entering the Orders which resulted in Relevant Trade Two.
- 23) At approximately 15:24:39, ICAP notified the Market of the block trade for the call option via the message facility.

By reason of ICAP's:

- entry of inactive Orders and the simultaneous activation of those Orders with the intent to exclude other Market Participants or their Representatives on 19 March 2013, the MDP had reasonable grounds to believe that ICAP contravened MIR 3.1.11, and thereby contravened subsection 798H(1) of the Act;
- entry of inactive Orders, the simultaneous activation of those Orders with the intent to exclude other Market Participants or their Representatives and the failure to make an enquiry through the message facility and wait the prescribed period on 7 August 2013, the MDP had reasonable grounds to believe that ICAP contravened MIR 3.1.11 and MIR 3.3.1A(1), 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 ICAP to pay for contravening subsection 798H(1) of the Corporations Act:

- by reason of contravening MIR 3.1.11, is \$100,000;
- by reason of contravening MIR 3.3.1A(1), is \$100,000.

Pursuant to subsection 798K(2) of the Corporations Act, the maximum pecuniary penalty that may be imposed by the MDP and payable by ICAP under an infringement notice given for contravening subsection 798H(1) of the Corporations Act:

- by reason of allegedly contravening MIR 3.1.11, is \$60,000;
- by reason of allegedly contravening MIR 3.3.1A(1), is \$60,000.

Penalty under the Infringement Notice

The total penalty under the infringement notice for the three alleged contraventions of subsection 798H(1) of the Corporations Act that ICAP must pay to the Commonwealth, is **\$50,000**, comprised respectively as follows:

- MIR 3.1.11 – 19 March 2013 – \$15,000;
- MIR 3.1.11 – 7 August 2013 – \$30,000;
- MIR 3.3.1A(1) – 7 August 2013 – \$5,000.

Relevant factors

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance and noted in particular the following:

- MIR 3.1.11 is aimed at ensuring a fair, open and transparent trading system, with a strict obligation imposed on Market Participants not to trade to the exclusion of others;
- MIR 3.3.1A facilitates this aim by requiring Market Participants to give others notice of an intention to trade;
- MIR 3.3.1A was adopted from ASX 24 Operating Rule Procedure 4401 to ensure alignment with supervisory policy and procedure requirements to assist market participants of the ASX 24 Market to comply with market integrity rules, operating rules and the Act;
- The misconduct on both days had the potential to damage the reputation and integrity of the market for the relevant Contracts because it impacted the fairness of the market, by preventing others from participating in the Relevant Trades, and reduced the transparency of the market, by not providing pre-trade information on the opposing Orders which transacted in Relevant Trades One and Two;
- ICAP self-reported the misconduct on Relevant Day One under section 912D of the Act however this self-report was neither timely nor did it address all potential breaches arising from the misconduct. Further, ICAP were required to self-report the misconduct of Relevant Day Two however failed to do so, notwithstanding that ASIC were aware of the misconduct;
- The misconduct concerned was intentional for all alleged breaches;
- The misconduct concerned was of a serious nature for all alleged breaches;
- There was no or minimal damage actually or potentially caused to a third party;
- ICAP undertook remedial actions after the conduct on Relevant Day One, including:
 - conducting a Training programme in relation to Expressions of Interest, Discretionary Orders and Pre-Negotiated business as well as the relevant market integrity rules; and
 - re-locating Compliance to the trading floor.
- The MDP regards it as commendable and best practice generally for Compliance to have a presence on the trading floor and particularly where there have been ongoing compliance issues despite education and training initiatives;
- Notwithstanding the Training programme and the relocation of Compliance, these remedial actions undertaken did not prevent the same conduct of Relevant Day One from reoccurring on Relevant Day Two, albeit in different circumstances. It is imperative that any remedial actions undertaken must not only provide remediation for conduct that has transpired but also serve to prevent future conduct of identical or like nature;
- ICAP also undertook remedial actions after the conduct on Relevant Day Two, including:
 - ceasing to accept or solicit Orders with discretion on its energy desk wherever possible; and
 - counselling and giving warnings to both Employee 1 and Employee 3.

- ICAP has had no previous contraventions found against it by the MDP regarding non-compliance with the market integrity rules but has had three previous contraventions found against it by the ASX Disciplinary Tribunal regarding non-compliance with the SFE Operating Rules;
- ICAP co-operated with ASIC throughout ASIC's investigation and did not dispute any material facts; and
- ICAP agreed not to contest the matter, thereby saving time and costs.

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 ("Regulations").

Additional regulatory information

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

Further information on market integrity infringement notices, the market integrity rules and the MDP is available in ASIC Regulatory Guide 216–*Markets Disciplinary Panel* and ASIC Regulatory Guide 225–*Markets Disciplinary Panel practices and procedures* or at <http://www.asic.gov.au> under "Regulatory Resources > Markets > Market Integrity Rules" and "Regulatory Resources > Markets > Markets Disciplinary Panel".