Participant Circular

Date: 8 February 2002

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Reading List

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DTR Operators.
Managing Directors.
Office Managers
Operations Managers (back office)

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DISCIPLINARY MATTERS

The Australian Stock Exchange Limited's National Adjudicatory Tribunal ("the Tribunal") has determined the following –

Barton Capital Securities Pty Limited ("Barton") has been fined a total of $60,000 (plus GST) by the National Adjudicatory Tribunal in relation to a breach of ASX Business Rules 2.2.4(1)(b) and 1.2.1(ii). Barton without making any admissions in relation to these breaches elected not to contest the charges. The Tribunal also accepted compliance undertakings offered to ASX by Barton as set out below. Barton agreed to pay the fine on a non admission basis without contesting the merits of the charges.

The circumstances of this matter are as follows:

During October 1997 to July 1998, the securities of Eastern Gold Corporation NL ("ECU") were the subject of a number of capital restructures and scrip based corporate transactions. During the period 20 November 1997 to 4 December 1997 and 18 March 1998 to 14 July 1998 ("the relevant period") a Barton client advisor ("the representative") conducted trades in ECU ordinary shares on behalf of a number of clients apparently associated with ECU ("associated entities"), primarily as a result of instructions given by one individual ("primary client") who was a substantial shareholder of shares in ECU.

The Tribunal determined Barton, taking into account the circumstances of the orders it received:

(i) Ought reasonably have suspected that the orders placed on behalf of the associated entities were placed with the intention of creating a false or misleading appearance with respect to active trading in shares in ECU or with respect to the market for, or price of, shares in ECU; and

(ii) Failed to consider the circumstances of the orders and its clients' intent in placing orders to deal in shares in ECU.

The trading in shares in ECU by Barton included the following:

(a) On 17 October 1997 ECU announced to the market that it proposed a new issue of 2 million shares at an issue price of $0.35 per share. Barton was not involved in this issue;

(b) On 18 November 1997 ECU announced, a partial takeover of an offshore entity by the offer of ECU shares and free attaching options, and that it intended to raise a minimum of A$3 million by the issue of a minimum of 7,500,000 ECU shares at a minimum of price of $0.40 per share together with a free attaching option. Barton was not involved with the issue;

(c) The partial execution on 20 November 1997 of an order placed the same day by the primary client that increased the price of shares in ECU by in excess of 14%. In accordance with the primary client's instructions the balance of the order was not executed that day after the price rise had taken place;

(d) The execution on 21 November 1997 of an order placed by the primary client on 20 November in the last two minutes of trading which increased the price of shares in ECU by 5%;

(e) A "crossing" on 20 November 1997 of shares in ECU which involved the same client but between two accounts held by that entity in differently spelled names, which was for 88% of the turnover of shares in ECU that day. The purpose of the crossing was to correct an administrative error in relation to the incorrect spelling of the client's name;

(f) The partial execution of an order placed by the primary client on 26 November 1997 that increased the price of shares in ECU by 33%. On completion of the first part of the order Barton was instructed by the primary client to cancel the remaining unfulfilled part of the order;

(g) On 14 April 1998 ECU announced to the market that it had placed 2 million shares in ECU, at an issue price of $0.20 per share and 1 million free options;

(h) Orders placed by the primary client including those on 18 March, 27 March, 8 April, 17 April, 4 May, 20 May, 27 May and 29 June, which had the effect of increasing the price of shares in ECU and established the closing price of shares in ECU at a price higher than would have otherwise been the case;

(i) A number of orders referred to in (i) were executed in accordance with client instructions several weeks after being received by Barton;

(j) In the case of orders placed by the primary client the volumes of each order placed represented a fraction of the holding of the primary client and the total volume of ECU shares within the overall control of the primary client;

(k) On 14 July 1998 Barton executed an order during the Closing Single Price Auction on behalf of a client which when executed increased the price of shares in ECU by 25.8%; and

(l) Later on 14 July 1998, ECU announced a placement with clients of Barton, the issue price of which was 0.5 cents per share higher than the price for ECU achieved by the client referred to in (k) above, who was a participant in the same placement.

The Tribunal also found a number Barton's order records relating to orders received to deal in shares in ECU were deficient in the following respects:

(a) In six order records the name of the natural person placing the order was incorrectly recorded;

(b) In fourteen order records instructions received from the primary client as to whether and when to execute transactions in SEATS were not recorded;

(c) In relation to one order transacted in SEATS, no order record was maintained;

(d) Two order records maintained by Barton did not adequately record relevant instructions as to the delay in executing the orders; and

(e) Four order records incorrectly recorded the time the order was received as a time subsequent to the entry of bids in SEATS pursuant to those orders.

Compliance Undertakings

Barton has undertaken to upgrade its supervision and compliance systems, in particular, Barton will:

(1) Expand its internal written policies in relation to compliance with Rule 1.2.1.2 (order records) and 2.2.4 (manipulative trading) to include discussion and examples in relation to the operation of the rules and Barton's policies with respect to them, including establishing a written enforcement policy which will be acknowledged by each advisor;

(2) Provide and document ongoing training, which will be administered by an appropriately qualified person, for all advisors on the policies Barton implements;

(3) Upgrade its internal mechanisms and resources for the enforcement of established policies.

The Tribunal noted the trading conducted in ECU by Barton occurred in 1997 and 1998. The Tribunal also noted Barton's undertakings to ASX and that since the trading in this matter occurred Barton had undergone significant structural change, recruited suitably qualified industry professionals, and implemented internal control and compliance procedures (including ongoing supervision and education for dealing staff) designed to promote positive compliance with Barton's regulatory commitments.

Sanford Securities Limited ("Sanford") has been fined a total of $80,000.00 (plus GST) by the Tribunal in relation to a breach of ASX Business Rule 2.2.4(1)(b)(iii) and ASX Business Rule 1.2.1(ii)(b) and (c). Sanford without making any admissions in relation to these breaches elected not to contest the charges. The Tribunal noted that the conduct occurred subsequent to 7 February 2000 when ASX Business Rule 13.5.1(3)(b) was amended to increase the maximum fine payable to the Exchange by a Participating Organisation from $100,000.00 to $250,000.00. The Tribunal also accepted compliance undertakings offered to ASX by Sanford as set out below.

The circumstances of this matter are as follows:

1. On 1 August 2000, the securities of Sanford Limited ("SFD") commenced official quotation on the Australian Stock Exchange.

2. During the relevant period (1 August to 13 October 2000) Sanford received 36 orders for the purchase or sale of SFD from a client, ("client"). These orders comprised of 33 buy and 3 sell orders.

3. The client at the time of SFD listing held a significant percentage of the quoted capital of SFD.

4. Sanford failed to have regard to the unusual characteristics of 13 of the buy orders placed by the client in circumstances where:

   (i) the execution of these orders materially altered the market for, or the price of, SFD (see ASX Business Rule 2.2.4(2)(b));

   (ii) these orders were received close to or after 4.00 pm on the trading day in question indicating that they may have been placed to have an effect on the closing price for SFD (see ASX Business Rule 2.2.4(2)(c));

   (iii) the client had a significant pre-existing holding in SFD and may therefore have had an interest in creating a false and misleading appearance with respect to the closing price for SFD (see ASX Business Rule 2.2.4(2)(d));

   (iv) these orders were part of a series of orders in that they were received from the same client, were received close to the end of the trading day and had the effect of increasing the closing price of SFD (see ASX Business Rule 2.2.4(2)(f)); and

(v) the effect of placing these orders close to the end of the trading day was to increase the likelihood that the client would pay more to acquire SFD than was necessary indicating it may not have had a legitimate commercial reason in placing the orders. On a number of days had the client placed its orders earlier in the day it would have been possible for it to buy substantial quantities of SFD at lower prices (see ASX Business Rule 2.2.4(2)(g)).

The Tribunal determined that Sanford:

(i) failed to consider the circumstances of the orders, as required by Business Rule 2.2.4(2); and

(ii) the circumstances of the orders were such that Sanford ought reasonably have suspected that the 13 orders placed by the client were so placed with the intention of creating a false or misleading appearance with respect to the market for, or price of, SFD contrary to ASX Business Rule 2.2.4(1)(b)(iii).

The Tribunal also found a number of Sanford's order records relating to orders received from the client to deal in SFD were deficient in the following respects:

(a) In relation to the thirty six orders received by Sanford from the client during the relevant period, each order was in breach of ASX Business Rule 1.2.1(ii)(c) as the orders did not contain the name of the natural person who placed the order; and

(b) Eleven order records incorrectly recorded the time the order was received (as a time subsequent to the time that the order was executed on SEATS).

The Tribunal considered the breach by Sanford of ASX Business Rule 1.2.1 was a serious matter. In this regard, the Tribunal noted that Sanford was informed by a Draft Inspection/Investigation Report dated 15 May 2000 and subsequent Management Letter dated 1 September 2000 (with respect to an unrelated matter) that there were deficiencies in Sanford's compliance with ASX Business Rule 1.2.1. Control systems implemented by Sanford in response to those deficiencies were not followed in the circumstances referred to above.

Compliance Undertakings

Sanford has undertaken to upgrade its supervision and compliance systems, in particular, Sanford will:

(1) Immediately revise its internal written policies in relation to compliance with Rule 1.2.1 (order records) and 2.2.4 (manipulative trading) to include discussion and examples in relation to the operation of these rules and Sanford's policies with respect to them, including establishing a written enforcement policy which will be acknowledged by each order taker;

(2) Provide and document ongoing training, which will be administered by an appropriately qualified person, for all Sanford's order takers on the policies Sanford implements;

(3) Upgrade its systems by 1 March 2002, to ensure that an order received on behalf of a client will not be accepted for entry into its system unless the field for the name of the natural person placing the order is completed; and

(4) Upgrade its systems by 1 March 2002, to ensure that it records the actual time of receipt of an order, not only the time that the order was placed into its system.

The Tribunal noted that since the trading in this matter occurred Sanford had undergone significant structural change and spent considerable resources over the subsequent 12 months re-writing and improving its transaction software. Sanford has since implemented internal control and compliance procedures (including ongoing supervision and education for order takers and DTR's) designed to promote positive compliance with Sanford's regulatory commitments.

Johnson Taylor Potter Limited ("Johnson Taylor") has been fined a total of $7,500 (plus GST) by the National Adjudicatory Tribunal in relation to breaches of ASX Business Rules 1A.2.2(1)(b) and 1A.2.1(1)(a).

The circumstances of the matter are as follows:

On 24 April 2001 Johnson Taylor's Liquid Capital divided by its Total Risk Requirement fell below 1.2. Johnson Taylor did not notify ASX in writing of this fact until 5.12 pm on 26 April 2001 and as such breached ASX Business Rule 1A.2.2(1)(b) by failing to notify ASX immediately in writing.

Some time in the period from 23 to 29 June 2001 Johnson Taylor's Liquid Capital divided by its Total Risk Requirement fell below 1.2. Johnson Taylor did not notify ASX in writing of this fact until 2.21 pm on 2 July 2001 and as such breached ASX Business Rule 1A.2.2(1)(b) by failing to notify ASX immediately in writing.

On 26 April 2001 and for part of the day on 27 April 2001 Johnson Taylor failed to ensure that its Liquid Capital was at all times greater than its Total Risk Requirement in breach of Rule 1A.2.1(1)(a).

On 29 June 2001 and until part way through the day on 3 July 2001 Johnson Taylor failed to ensure that its Liquid Capital was at all times greater than its Total Risk Requirement in breach of Rule 1A.2.1(1)(a).

The Tribunal took into account the unique circumstances surrounding the breaches. Johnson Taylor had been in increasing financial difficulties during the first half of 2001, and the June/July breaches occurred in the context of an almost complete change in ownership and management of Johnson Taylor.

The Tribunal considered that, although all of the charges had been established, fines should be imposed with respect to the April breaches but no penalty should be imposed with respect to the June/July breaches.

Notwithstanding these matters, the Tribunal emphasised that compliance with the capital adequacy rules is critically important, as they form the foundation of the public's ability to have confidence in the integrity of the market and the industry.

Findlay & Co Stockbrokers Limited ("Findlay") has been fined $8,500 (plus GST) by the National Adjudicatory Tribunal with respect to breaches of old Rule 1.2.1(ii) (order records) and Rule 3.8 (contract notes).

The circumstances of this matter are as follows:

Findlay's order records were deficient (during the period 30 March-2 November 2000) in the following respects:

(1) Findlay did not maintain order records with respect to 10 orders received from clients and one order record was not numbered. This was a breach of Rule 1.2.1(ii);

(2) Six order records kept by Findlay did not or did not accurately record the date and time the orders were received. This was a breach of Rule 1.2.1(ii)(b);

(3) One order record kept by Findlay did not record the name of the natural person who placed the order. This was a breach of Rule 1.2.1(ii)(c);

(4) One order record kept by Findlay did not record the name of the client who placed the order. This was a breach of Rule 1.2.1(ii)(d); and

(5) One order record kept by Findlay did not record price limit or price related instructions. This was a breach of Rule 1.2.1(ii)(e).

Findlay was fined $3,500 with respect to these breaches.

On 7 days in the period from 23 August 2000 to 14 September 2000 Findlay purchased securities pursuant to one order received from a client. The client had given Findlay instructions to "book out" the securities purchased under the order only when a defined number of securities had been purchased. Findlay sent a contract note to the client on 20 September 2000 with respect to securities purchased on the 7 days. Findlay was found to have breached Rule 3.8 with respect to the securities purchased in the period from 23 August 2000 to 14 September 2000 as it did not immediately despatch a contract note to the client. Rule 3.8A (accumulation of stock purchased under an order for a Professional Investor) did not apply as Findlay did not despatch a contract note to the client within three Business Days after the initial purchase or sale of securities (as required by Rule 3.8A(1)(b)). Findlay was fined $5,000 with respect to this breach.

JP Morgan Private Financial Services Limited ("JP Morgan") has been fined $4,000 (plus GST) in respect of a breach of ASX Business Rules 7.8.3.2(a) and 7.8.3.4(b).

On 31 August 2001, JP Morgan executed a Special Crossing of a Non-Standard Combination of options in circumstances where orders of more than one client were aggregated on both sides of the relevant Combination contrary to ASX Business Rule 7.8.3.4(b). This, in turn, caused JP Morgan to breach ASX Business Rule 7.8.3.2(a) because at least one of the components of the Combination was not over the Special Size as prescribed by section 7.8.3.2 of the Derivatives and Trading Clearing Procedures.

Merrill Lynch Equities (Australia) Limited ("MLEAL") has been fined $2,000 (plus GST) with respect to a breach of ASX Business Rule 3.12(2). The circumstances of this matter are that in the period from 8 September 1994 to 18 September 2001 MLEAL's nominee company was not a directly, legally and beneficially owned subsidiary of MLEAL.

Merrill Lynch Private (Australia) Limited ("MLP") has been fined $2,000 (plus GST) with respect to a breach of ASX Business Rule 3.12(2). The circumstances of this matter are that in the period from 8 September 1994 to 18 September 2001 MLP's nominee company was not a directly, legally and beneficially owned subsidiary of MLP.

Berndale Securities Limited ("Berndale") has been fined $2,000 (plus GST) with respect to a breach of ASX Business Rule 3.12(2). The circumstances of this matter are that in the period from 27 March 2001 to 18 September 2001 Berndale's nominee company was not a directly, legally and beneficially owned subsidiary of Berndale.

Macquarie Equities Limited ("MEL") has been fined $4,000 (plus GST) in respect of a breach of ASX Business Rules 7.8.3.1 and 7.8.3.4(a). The circumstances of this matter are that on 14 September 2001 MEL executed a special crossing of orders in a single series of options where in order to achieve the special size, orders of more than one client were aggregated on both sides of the relevant option transaction contrary to these rules.

Taylor Collison Limited ("Taylor Collison") has been fined $1,500 (plus GST) in respect of a breach of ASX Business Rule 1.2.2(4). The circumstances of this matter are that in June 2001 Taylor Collison offered its clients the opportunity to participate in a placement of shares and required its clients to lodge a 20% deposit with their application. A sub-account was established within its accounting system to account for the amounts received for the placement. During the period 6 June to 14 June 2001 on 6 occasions sums received from clients were removed from the Trust Account after initially being placed there as a result of an incorrect designation of the name of the sub-account. On 15 June 2001 Taylor Collison became aware that it had made these unauthorised withdrawals from its Trust Account and immediately rectified the error and self-reported the matter to the Exchange.

D&D-Tolhurst Limited ("D&D-Tolhurst") has been fined $6,000 (plus GST) and censured by the National Adjudicatory Tribunal with respect to breaches of the following ASX Business Rules:

(1) Rule 2.7.1 (crossings permitted during Normal Trading);

(2) Rule 1.2.1(ii) (requirements relating to order records); and

(3) Rule 2.4.1(1) (prohibition on dealing in a new issue or placement until securities have been granted official quotation).

The circumstances of this matter are as follows:

At 8.18am on 20 November 2000 D&D-Tolhurst reported a crossing in SEATS of 1.5 million shares in Golden Triangle Resources NL ("GTL") at 7 cents each using parameter "O". D&D-Tolhurst had not received orders to purchase 200,000 GTL included in the crossing at the time the crossing was reported. It subsequently received orders to purchase the remaining 200,000 GTL in the pre-open phase and normal trading phase of SEATS. As such D&D-Tolhurst was required to comply with Rule 2.7.1 before crossing the 200,000 GTL included in the crossing of 1.5 million GTL. D&D-Tolhurst did not create a crossing market in SEATS prior to crossing the 200,000 GTL and as such breached Rule 2.7.1. The Tribunal noted that D&D-Tolhurst self-reported this breach. The Tribunal fined D&D-Tolhurst $1,000 plus GST with respect to this breach.

Three order records prepared by D&D-Tolhurst in relation to the crossing incorrectly record the date and time the orders were received in breach of ASX Business Rule 1.2.1(ii)(b). One amended order record prepared in relation to the crossing does not record the name of the natural person who placed the amended order in breach of ASX Business Rule 1.2.1(ii)(c). The Tribunal noted that D&D-Tolhurst self-reported this breach. The Tribunal censured D&D-Tolhurst with respect to this breach.

Between 22 and 24 November 2000 D&D-Tolhurst executed trades to sell 1,675,000 GTL and 800,000 options with respect to Golden Triangle Resources NL ("GTLOA") in circumstances where those shares and options were issued under a placement that was not granted official quotation until 28 November 2000. As such D&D-Tolhurst breached ASX Business Rule 2.4.1(1) with respect to these trades. The Tribunal noted that D&D-Tolhurst acted as underwriter for the placement and an associate company of D&D-Tolhurst acted as adviser to Golden Triangle Resources NL in relation to the placement. It also noted that some of the accounts on whose behalf the trades were executed were associated with D&D-Tolhurst advisers. The Tribunal fined D&D-Tolhurst $5,000 plus GST with respect to this breach.