

ASX Market Circular

Date: 22 March 2004

Key topics

1. Terrain Securities Limited
2. Goldman Sachs Australia Pty Limited

Reading List

Client Advisers (Brokers)  
Compliance Managers  
DTR Operators  
Managing Directors  
Office Managers  
Operations Managers (back office)

ASX contact

Martin Kinsky

Telephone

(02) 9227 0419

Australian Stock Exchange Ltd  
ABN 98 008 624 691  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000  
PO Box H224  
Australia Square NSW 1215

Telephone 61 3 9617 7834  
Facsimile 61 3 9614 7124  
Internet: <http://www.asx.com.au>  
DX 10427 Stock Exchange Sydney

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## DISCIPLINARY MATTERS

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

**ACN 008 082 157 Pty Ltd (Administrators Appointed) formerly known as Terrain Securities Limited (Terrain)** has been fined a total of \$15,000 plus GST in respect of a breach of Rule 5B6.1 in that Terrain failed to take out and maintain insurance of a kind and for an amount that a reasonable person would determine to be adequate having regards to the nature and extent of the business carried on by the Participating Organisation.

The Tribunal found the following facts:

- (i) From 16 June, 2003 Terrain was an inactive Participating Organisation.
- (ii) From 1 July 2003, Terrain failed to take out professional indemnity run off insurance.

The Tribunal determined that:

- (i) Rule 5B6.1 required Terrain to take out professional indemnity run off insurance notwithstanding that Terrain was an inactive Participating Organisation;
- (ii) Terrain had not taken out professional indemnity run off insurance; and
- (iii) Terrain was therefore in breach of Rule 5B6.1.

The Tribunal viewed the breach as serious as it had the potential to jeopardise possible claims against Terrain being paid out. Accordingly, the Tribunal imposed a fine of \$15,000 plus GST. The Tribunal determined that Terrain be named in a Disciplinary Circular.

**Goldman Sachs Australia Pty Limited ("GSA")** has been fined \$85,000.00 (plus GST) by the National Adjudicatory Tribunal ("Tribunal") with respect to a breach of ASX Business Rule 13.5.1 and with respect to breaches of ASX Business Rule 1.2.1.2 and 1.2.1.3 (Records of Orders).

The circumstances of the breach of ASX Business Rule 13.5.1 relate to certain trading practices adopted by GSA with respect to dealings in the shares of Telstra Corporation Limited ("TLS") on SEATS during the period 1 to 19 August 2002 ("**Relevant Period**").

GSA, without making any admission of breach, elected to refrain from contesting the matter before the Tribunal.

The circumstances of the matter are as follows:

During the Relevant Period, GSA executed certain transactions in TLS on SEATS, the majority as principal, which accounted for approximately seven percent of the average daily market volume in TLS during the Relevant Period.

The Tribunal noted the following trading practices in connection with certain of the transactions executed by GSA as principal during the Relevant Period:

- *Entering bids and offers at the same price:* entering a bid (or an offer) on SEATS in circumstances where an opposing offer (or bid) was already entered in SEATS at the same price with lower priority. Such bids or offers when executed did not produce a positive outcome for GSA in terms of commission or directional profit. This occurred on 20 occasions;
- *Entering competing bids or offers:* entering a bid (or an offer) on SEATS that was contrary to a open long (or short) position previously opened a short time earlier. Such bids or offers when executed did not produce a positive outcome for GSA in terms of commission or directional profit. This occurred on 6 occasions; and
- *Facilitation of client orders:* purchasing or selling as principal (crossing on market) to facilitate the execution of client orders and rather than executing such orders through the market, at a time when such orders could have been executed through the market at the same time and price as those achieved through the principal crossing. This occurred on 7 occasions.

The Tribunal considers that such trading practices are inappropriate for the following reasons:-

- Dealings such as bids and offers that are entered at the same price in such circumstances, have the potential to create an appearance of increasing the activity of the Trading Participant in the security involved, yet they appear unlikely to produce any commercial outcome for the Trading Participant so that the propriety of the dealings is questioned, and
- Dealings such as entering competing bids or offers within a short time frame in such circumstances, have the potential to create an appearance of increasing the activity of the Trading Participant in the security involved yet they also appear unlikely to produce any commercial outcome for the Trading Participant so that the propriety of the dealings is questioned.

The circumstances of the breach of ASX Business Rule 1.2.1.2 and 1.2.1.3 are that, in the course of an inquiry, ASX requested order records from GSA created during the Relevant Period. Certain of the order records provided by GSA were deficient in the following respects:

- Fifteen orders records did not contain an accurate record of the volume or time of the order received;
- Eight order records did not record the name of the person placing the order.

The Tribunal noted that GSA undertook immediate remedial measures to address the issues identified by the ASX and implemented appropriate compliance training, policies and procedures to satisfy the requirements of Business Rule 1.2.1.2 and 1.2.1.3.

It was noted that GSA ceased to be a Participating Organisation of the ASX with effect from 12 September 2003 and, accordingly, the Tribunal noted that the receipt of undertakings as to future conduct from, and the adoption of revised compliance policies and procedures by, GSA were not appropriate in these circumstances. However the Tribunal noted that pursuant to Business Rule 5.5.2(a), following the resignation of GSA, the Business Rules continued to apply and ASX continued to have jurisdiction concerning any conduct or any failure to comply with the Business Rules by GSA prior to its resignation. The fine was considered appropriate with respect to the breach of Rules 1.2.1.2, 1.2.1.3 and 13.5.1.