



Participant Circular

Date: 19 November 2002

Key topics

1. Macquarie Equities Limited
2. Merrill Lynch Equities (Australia) Limited

Reading List

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

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No responsibility is accepted for any inaccuracies contained in the matter published.

DISCIPLINARY MATTERS

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

Macquarie Equities Limited ("MEL") has been fined a total of \$15,000 (plus GST) in relation to 5 breaches of ASX Business Rule 1.2.2(4). MEL elected not to contest the charge.

The circumstances of this matter are as follows:

1. On 29 January 2002 whilst conducting its Trust Account banking, MEL calculated its Trust Account position for that day and in error also incorporated its Trust Account position for the previous business day (25 January 2002). This in turn, caused MEL to make an unauthorised withdrawal (in contravention of ASX Business Rule 1.2.2(4)) from its Trust Account in the sum of \$25,963,083.26 on this day. Due to a clerical error on MEL's part, this matter was not rectified until 31 January 2002. MEL self-reported this breach to the ASX on 1 February 2002.
2. On 18 February 2002 MEL transferred the sum of \$13,731,433.54 (these funds were CHESS settlement receipts) from its Trust Account to its general account. Due to a clerical error, MEL did not exclude this amount from its end of day Trust Account calculations, causing this sum to be withdrawn from its Trust Account for a second time (in contravention of ASX Business Rule 1.2.2(4)). Due to a clerical error on MEL's part, this matter was not rectified until 20 February 2002. MEL self-reported this breach to the ASX on 22 February 2002.
3. On 28 February 2002 a client instructed MEL to purchase shares and at MEL's request deposited the sum of \$47,293.70 into MEL's Trust Account with respect to the settlement of the trade. However, when the client deposited these funds via a branch of the National Australia Bank the client did not list their Macquarie Bank account number or MEL's agent number on the deposit slip thereby causing the funds to appear on MEL's Trust Account statement with no identifying information other than "Deposit". MEL's daily Trust to General transfer calculation did not provide for "unidentified deposits" shown on its bank statement to be retained in its Trust Account and therefore the sum of \$47,293.70 was without authority, transferred into MEL's general account on 1 March 2002 in contravention of ASX Business Rule 1.2.2(4).
4. On 5 March 2002 a client deposited the sum of \$8,813.00 into MEL's Trust Account in the same circumstances as set out at paragraph 3 above. As the monies were shown as an unidentified deposit, MEL transferred the sum of \$8,813.00 into MEL's general account, without authority, on 6 March 2002 in contravention of ASX Business Rule 1.2.2(4).

5. On 6 March 2002 a client deposited the sum of \$2,871.00 into MEL's Trust Account in the same circumstances as set out at paragraph 3 above. As the monies were shown as an unidentified deposit, MEL transferred the sum of \$2,871.00 into MEL's general account, without authority, on 7 March 2002 in contravention of ASX Business Rule 1.2.2(4).
6. In relation to this matter, MEL engaged an independent consultant to conduct a review of its policies and procedures regarding the operation of its Trust Account and has undertaken to ASX to implement any recommendations made by that consultant without delay.

Merrill Lynch Equities (Australia) Limited ("Merrill Lynch") has been fined a total of \$25,000 (plus GST) in relation to breaches of ASX Business Rule 1A.2.1(1)(a) and 1A.2.10(1)(b).

The circumstances of this matter are as follows:

Merrill Lynch did not deduct an Excluded Asset from its Liquid Capital calculation when it should have done so. This resulted in Merrill Lynch breaching the following ASX Business Rules-

- (a) Rule 1A.2.1(1)(a) in that on 16 May 2002 and until part way through 25 June 2002 Merrill Lynch 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 fined Merrill Lynch \$20,000 (plus GST) with respect to this breach.
- (b) Rule 1A.2.10(1)(b) in that Merrill Lynch did not deduct the Excluded Asset from its Liquid Capital calculation in its Capital Liquidity Return for May 2002. Accordingly Merrill Lynch failed to ensure that it prepared a return which accurately reflected its accounts and its financial position in contravention of Rule 1A.2.10(1)(b). The Tribunal fined Merrill Lynch \$5,000 (plus GST) with respect to this breach.

In considering the seriousness of these breaches the Tribunal took into account;

- The seriousness of the breaches and the amount of money involved in the breaches,
- The fact that Merrill Lynch did not self-report the breaches,
- The inadequacy of Merrill Lynch's internal policies which was revealed by the breaches,
- Merrill Lynch's advice that it has amended its internal policies to ensure these breaches are not repeated.