

ASX Circular

Date: 21 December, 2004

Key topics

1. ACN 008 082 157 Pty Ltd
2. Commonwealth Securities Limited

Reading List

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

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DISCIPLINARY MATTERS

The Australian Stock Exchange's Disciplinary Tribunal has determined the following:

ACN 008 082 157 Pty Ltd (Subject to Deed of Company Arrangement) (formerly known as Terrain Securities Pty Ltd – “Terrain”) has been fined a total of \$75,000 plus GST in respect of breaches of old ASX Business Rules 1A.2.7(2), 1A.2.10(1)(b), 1.3(2) and in respect of Prohibited/Unprofessional Conduct as referred to in Business Rule 13.5.1 and as defined in the Business Rules.

There was no appearance by either party at the hearing and no argument in mitigation advanced for or on behalf of Terrain. The Tribunal formed the view that the breaches had been made out on the basis of the facts outlined in the Final Inspection Report that was forwarded to the Tribunal by ASX's Investigations and Enforcement Department.

The circumstances of this matter are as follows:

1. for the entire period that it operated (from January 2001 to August 2003 – when an Administrator was appointed) there existed an arrangement (“**the Arrangement**”) between Terrain and an associated company such that the associated company paid some of the expenses incurred by Terrain as part of Terrain's stockbroking business;
2. as a result of the Arrangement, Terrain had a contingent liability (“**Contingent Liability**”) in respect of the expenses paid by the associated company in circumstances where the value of the Contingent Liability was substantial;
3. during the period 7 January 2003 to 4 July 2003, Terrain breached old ASX Business Rule 1A.2.7(2) in that it lodged 7 Monthly Capital Liquidity Returns that were not prepared in accordance with accounting standards generally accepted in Australia (Returns lodged prior to this time did not require the disclosure of contingent liabilities) in that each Return incorrectly recorded Terrain's contingent liabilities as “0” rather than disclosing the Contingent Liability in accordance with Accounting Standard AASB 1044;
4. during the period 7 January 2003 to 4 July 2003, Terrain breached old ASX Business Rule 1A.2.10(1)(b) by failing to prepare Returns which accurately reflected its accounts and financial position in that it lodged 7 Monthly Capital Liquidity Returns that all incorrectly recorded Terrain's contingent liabilities as “0”;
5. on 31 August 2001 and 30 August 2002, Terrain breached old ASX Business Rule 1A.2.10(1)(b) by failing to prepare Returns which accurately reflected its accounts and financial position in that it lodged 2 Annual Audited Returns which incorrectly recorded Terrain's contingent liabilities as “0”;
6. on 31 August 2001 and 30 August 2002, Terrain breached old ASX Business Rule 1.3(2) in that it lodged 2 Audited Financial Reports with ASX that did not give a true and fair view of the state of affairs of Terrain's business in that these

7. on 31 August 2001 and 30 August 2002, Terrain breached old ASX Business Rule 1A.2.7(2) in that it lodged Audited Financial Reports which failed to disclose the existence of the Contingent Liability by way of a note in accordance with Accounting Standard AASB 1034;
8. during the period August 2001 to July 2003, and with respect to the matters referred to above, Terrain engaged in Prohibited Conduct/Unprofessional Conduct in respect of its lodgement with ASX of Monthly Capital Liquidity Returns, Annual Audited Returns and Audited Financial Returns in that Terrain engaged in:
 - (i) unsatisfactory professional conduct, involving a substantial or consistent failure to reach reasonable standards of competence and diligence, and/or
 - (ii) conduct which was or could reasonably be considered as likely to be prejudicial to the interests of the Exchange or its Participating Organisations or Affiliates.

In considering this aspect of Terrain's conduct the Tribunal, amongst other things, noted that Terrain had entered into the Arrangement so as to assist it to demonstrate compliance with old ASX Business Rule 1A, when it would not have otherwise been able to demonstrate such compliance without obtaining more capital; and

9. with respect to the amount of the fine imposed upon Terrain, the Tribunal, amongst other things, noted that the Rules (referred to above), independently and collectively, place critical importance on the requirement for the Exchange to be fully informed of the financial position of Participating Organisations, and for financial information provided by participating organisations to the Exchange to be accurate and complete, and not misleading or erroneous.

Commonwealth Securities Limited ('CommSec') has been fined a total of \$7,500.- plus GST in respect of breaches of 'Old' ASX Business Rule 5.6(2) and ASX Business Rule 5B.3.1(b).

'Old' ASX Business Rule 5.6(2) provides:

"5.6(2) A Participating Organisation shall notify the Exchange in advance, of the address, and every change of address, of each place at which the Participating Organisation carries on a securities business."

ASX Business Rule 5B.3.1(b), which came into effective from 16 July 2002, provides:

"5B.3.1 Change of name or address

A Participating Organisation must notify the Exchange in writing if:

- (a)
- (b) *the Participating Organisation changes any address at which the Participating Organisation carries on business, before the change becomes effective. The notice must include full details of the change."*

From 31 May 2002 to 15 July 2002, CommSec operated a branch office situated in Victoria at which it was carrying on a securities business within the meaning of old ASX Business Rule 5.6(2). CommSec was under an obligation pursuant to 'old' ASX Business Rule 5.6(2) to notify the Exchange of the address of this branch office in advance of carrying on a securities business at that location but had failed to do so.

Changes to the ASX Business Rules from 16 July 2002, saw 'old' ASX Business Rule 5.6(2) replaced by ASX Business Rule 5B.3.1(b). During the period 16 July 2002 to 17 December 2003, CommSec operated nine branch offices at various

locations across Australia in which it was carrying on its business without having first notified the Exchange. CommSec did not notify the Exchange of the addresses of these branch offices until 17 December 2003.

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