

ACH Notice

Date: 17 September 2008

Key topics

1. Tolhurst Limited

Reading List

Client Advisers
Compliance Managers
ASTC Participants
Operations Managers (back office)
Share Registries
ACH Participants

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ACH PARTICIPANT NOTICE

Disciplinary Matters

The ACH Disciplinary Tribunal ("the Tribunal") has determined the following:

Tolhurst Limited ("Tolhurst") has been fined \$40,000 (plus GST) for contravening ACH Clearing Rule 5.1.1 by failing to comply with the Risk Based Capital Requirements set out under Schedule S1.2.1(1)(a) to the ACH Clearing Rules.

Tolhurst contravened ACH Clearing Rule 5.1.1 by failing to comply with Schedule S1.2.1(1)(a) to the Rules on 22 January 2008, in that Tolhurst failed to ensure that its Liquid Capital was at all times greater than its Total Risk Requirement.

Tolhurst did not contest the contravention before the Tribunal.

The Circumstances of this matter are detailed as follows:

On the morning of 22 January 2008, Tolhurst advised Prudential Risk Management ("PRM") that as at close of business on 21 January 2008, Tolhurst's Liquid Capital to Total Risk Requirement had fallen to 1.143 and that it would be drawing down subordinated debt in order to bring the ratio back above 1.2.

On the morning of 23 January 2008, Tolhurst self reported to PRM that as at close of business on 22 January 2008, Tolhurst's Liquid Capital to Total Risk Requirement had fallen to 0.8.

On 23 January 2008, Tolhurst provided an ad hoc return which established the ratio as 0.639.

On 23 January 2008, Tolhurst advised that the drop in capital ratio had been caused by a significant increase in the margined financial instruments counterparty risk.

By close of business on 23 January 2008, Tolhurst restored its ratio to 1.274.

In determining penalty, the Tribunal also took into account the following matters:

- (a) The circumstances and duration of the contravention;
- (b) Tolhurst self reported the contravention as soon as it became evident;
- (c) Tolhurst co-operated with ACH and ASX Investigations in the investigation of the matter;
- (d) Tolhurst took immediate action to rectify the matter and its Liquid Capital Ratio was restored above 1.2 within the day;
- (e) Tolhurst has employed an additional experienced risk professional to oversee derivatives risk management;
- (f) Tolhurst did not contest the Contravention;
- (g) Controls Tolhurst has implemented to enhance its risk management framework in times of market volatility;
- (h) ACH Rule 5.1.1 is a provision that imposes a strict and mandatory obligation on Participants to comply with the Risk Based Capital Requirements set out in

Schedule 1.2.1(1)(a), which are of fundamental importance to ACH's Prudential regulation of its Participants and to the integrity and stability of ASX's markets;

- (i) Tolhurst's disciplinary history having been before the Tribunal for a capital liquidity breach in August 2007; and
- (j) The market conditions at the time the breach occurred.

The Tribunal noted that the Risk Based Capital Requirements are a fundamental aspect of the ACH's prudential regulation of its Participants. The failure to comply with those requirements has the potential to adversely affect the financial stability of Participants, the financial security of clients, and the integrity of the market. Accordingly, the Tribunal views any breach of the Risk Based Capital Requirements to be a matter of serious concern.

The Tribunal is satisfied that the imposition of this fine appropriately serve the purposes of protecting the interests of the ASX and its participating organisations and of promoting confidence in the integrity of the markets.