



## ASX Circular

Date: 16 January 2012

## Key topics

1. Goldman Sachs Australia Pty Limited

## Reading List

Client Advisers  
 Compliance Managers  
 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 ASX Disciplinary Tribunal (the 'Tribunal') has imposed a fine of \$50,000 (plus GST) on Goldman Sachs Australia Pty Limited ('GSA') for failing to ensure that client monies were treated in accordance with requirements of ASX Market Rules and the Corporations Act. The circumstances involved contraventions of the following:

- a) ASX Market Rule 7.11.1\* – A Market Participant must comply with the relevant provisions of the Corporations Act governing the keeping and treatment of money paid, or property given, to the Market Participant in connection with services provided to, or products held by, clients of the Market Participant in respect of their business. ('Contravention 1'); and
- b) ASX Market Rule 7.11.10\* – A Market Participant must perform reconciliations that are accurate in all respects. ('Contravention 2').

GSA elected not to contest the contraventions before the Tribunal.

The circumstances of the matter are detailed as follows:

GSA was in breach of s 981B of the Act as:

- On 4 November 2009 GSA's bank incorrectly credited interest of \$78.23 into its clearing account. This error by GSA's bank was identified by GSA on the following day, as a result of its reconciliation process. GSA informed the bank of the error and the transaction was promptly reversed on the day after the error occurred;
- On 31 December 2009, GSA's bank incorrectly debited \$20 of client money from trust accounts on two occasions. These errors by GSA's bank were identified by GSA on the following day, as a result of its reconciliation process. GSA informed the bank of the errors and the transactions were promptly reversed on the day after the errors occurred;
- On 18 and 19 January 2010 three payments of client monies received one day in advance of settlement of a cash market product transaction (and totaling \$105,443.89) were paid into a house account operated by GSA instead of a trust account; and
- In a five week period between March and April 2010, client monies in the form of interest in the sum of \$5,405 were paid into a house account in error.

GSA performed the reconciliations in accordance with the time and form required by Market Rule 7.11.10 and the corresponding Procedures. However, by not including a process by which GSA could manually (if necessary) identify all transactions to ensure that the client monies were treated in accordance with requirements of the Market Rules and the Act, GSA did not perform the reconciliations in a manner which would identify all of the alleged breaches as particularised above. Accordingly, the reconciliations were not accurate in all respects.

In determining penalty, the Tribunal took into account a number of matters, including the following:

- a) the misconduct was self-reported in a timely and comprehensive manner;
- b) GSA fully co-operated with ASX in relation to the conduct of its investigation into the contraventions;
- c) GSA agreed at the earliest opportunity not to contest the contraventions;
- d) the misconduct was unintentional and in a number of cases the misconduct was the responsibility of an unrelated third party;
- e) at no stage was any market transaction not enabled because of the misconduct;
- f) there was no commercial advantage or financial benefit obtained as a result of the misconduct;
- g) there were no losses suffered by clients, or compensation claims or complaints made by clients in relation to the contraventions;
- h) GSA has promptly implemented remedial measures to seek to prevent any recurrence of the contravening conduct;
- i) GSA has previous disciplinary history, notwithstanding that GSA has no previous disciplinary history regarding the matters relevant to the misconduct;
- j) the misconduct involved several breaches over a six month period; and
- k) the relevant conduct had the potential to damage the reputation and integrity of ASX and the market and facilities it operates.

#### Disciplinary Tribunal Sanction Guidelines

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the contravention of the ASX Market Rules was appropriately classified as a Level 2 (Serious Contravention), for which the applicable penalty range is \$20,000 to \$100,000 (plus GST).

The Tribunal considered the aggravating and the mitigating circumstances in each contravention.

Given the aggravating and mitigating circumstances in this matter, the Tribunal determined that the total fine of \$50,000 (plus GST) for both contraventions represents an appropriate sanction in the circumstances.

The Tribunal's opinion is that this sanction will serve as a deterrent to other participants (and their representatives), from engaging in similar misconduct while at the same time appropriately serve the interests of ASX and market participants by supporting the integrity of the market and facilities it operates.

\* On 1 August 2010, the supervision of trading on Australia's domestic licensed markets and the supervision of trading participants transferred from ASX to the Australian Securities and Investments Commission. The conduct that is the subject of these contraventions occurred prior to the transfer date. ASX will continue to manage, and bring before the Tribunal, disciplinary matters for potential breaches of its operating rules occurring before the transfer date.

As part of the transfer, a number of changes were made to the rules, including the replacement of the ASX Market Rules by the ASX Operating Rules. Potential operating rule breaches which occurred prior to 1 August 2010 will be dealt with in accordance with the rules in place at the time of the alleged breach.