ASX
AUSTRALIAN SECURITIES EXCHANGE

ASX Circular

Date: 22 January 2007

Key topics

1. BBY Limited

Reading List

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

Contact

Jodie Maurer

Telephone

(02) 9227 0472

ASX Limited
ABN 98 008 624 691
Exchange Centre
20 Bridge Street
Sydney NSW 2000
PO Box H224
Australia Square NSW 1215

Internet: http://www.asx.com.au

DISCIPLINARY MATTERS

The Australian Securities Exchange Limited's Disciplinary Tribunal ("the Tribunal") has determined the following two matters:

BBY Limited ("BBY") contravened and failed to comply with ASX Market Rule 6.1.1 and the Returns requirement contained in S1A.2.10(1) of Schedule 1A of the ASX Market rules in that the Capital Liquidity Return BBY prepared for the period ending 30 June 2005 and submitted to ASX on 7 July 2005 did not accurately reflect its accounts and its financial position as of 30 June 2005.

The Tribunal imposed a fine of $10,000 (plus GST) in respect of this contravention. The circumstances of this matter are detailed as follows:

On 7 July 2005, BBY submitted to ASX its monthly Capital Liquidity Return for the period ending 30 June 2005. The Return contained errors as follows:

- An Intercompany balance amount was incorrectly included as 'Other Current Assets' when it should have been recorded as an 'Unsecured non ADTI related/associated person balances' amount;
- A Funds due from recapitalisation amount was incorrectly included under BBY's 'Other Current Assets' when it should have been recorded as an 'Unsecured non ADTI related/associated person balances' amount; and
- An Intercompany payable amount was incorrectly included under BBY's 'Other current Liabilities' when it should have been recorded as a 'Non Cumulative Preference Shares' amount.

As a result of the errors the Return was not prepared and submitted to ASX in a manner which accurately reflected its accounts and financial position.

On 19 August 2005, BBY submitted an amended 30 June 2005 Capital Liquidity Return which corrected the errors reflected in its return of 7 July 2005. ASX concluded that BBY had not contravened the Capital Liquidity Requirements contained in S1A.2.10(1) of Schedule 1A of the ASX Market Rules.

In determining sanction the Tribunal took into account the following factors:

(a) The facts and circumstances of the contravention;

(b) Disciplinary history for BBY;

(c) The importance of accurate Capital Liquidity Returns;

(d) BBY's conduct was not intentional, manipulative or fraudulent;

(e) BBY obtained no commercial advantage or financial benefit;

(f) BBY has taken steps to minimise the risk of a recurrence of this type of contravention; and

(g) BBY co-operated with ASX and did not contest these contraventions.

The Tribunal has determined the following:

BBY Limited ("BBY") contravened:

- ASX Market Rule 4.4.1 in that it failed to notify ASX in writing on or before the next Business Day of the full details of action that was being taken by ASIC in June 2005 against it or any of its Employees, its delegates or an authorised person under the Corporations Act.
- ASX Market Rule 4.19.1 in that it failed to:
  - (a) Ensure that all information which it or its Employees gave to ASX was complete, accurate and not misleading; and
  - (b) Promptly notify ASX in writing when it became aware that information which it, or its Employees, had given previously to ASX was incomplete, inaccurate or misleading.

The Tribunal imposed a fine of $35,000 (plus GST) in respect of these contraventions. The circumstances of this matter are detailed as follows:

<u>ASX Market Rule 4.4.1</u>

On 16 June 2005 ASIC advised BBY in writing of proposed licensing action under the Corporations Act against BBY. BBY failed to inform ASX of the proposed ASIC action under the Corporations Act on or before the next Business Day, namely 17 June 2005. BBY stated it had considered its obligations under the ASX Market Rule 28.2.3 to notify ASX of regulatory action taken by ASIC and, on independent professional legal advice, concluded that ASX Market Rule 28.2.3 did not require it, at that stage, to notify ASX.

<u>ASX Market Rule 4.19.1</u>

On 29 March 2005 ASX requested that BBY provide any documents which showed the establishment of Chinese walls in relation to a particular transaction, and the names of any BBY employees who crossed that wall.

On 5 April 2005 BBY provided written information to ASX stating that no parties were brought across the wall for the purposes of the particular transaction. On 31 August 2005, BBY made written submissions to ASIC which in part acknowledged that the statement made in its letter to ASX of 5 April 2005 in response to the ASX's correspondence of 29 March 2005 was not correct.

- The information provided by BBY to ASX failed to include the names of BBY's employees who had crossed BBY's Chinese wall, which was information specifically requested by ASX; and
- Subsequent to 31 August 2005, BBY failed to promptly notify ASX in writing that the information previously provided to ASX by BBY was incomplete.

In determining sanction the Tribunal took into account the following factors:

(a) The facts and circumstances of the contraventions;

(b) Disciplinary history for BBY;

(c) The importance of Participants providing accurate, complete and not misleading information to ASX;

(d) The importance of ASX being informed of ASIC actions against a Participant;

(e) The contraventions were not intentional, manipulative or fraudulent;

(f) BBY had placed reasonable reliance upon the receipt of independent professional legal advice;

(g) BBY obtained no commercial advantage or financial benefit;

(h) BBY has taken significant steps in relation to compliance and compliance education to minimise the risk of a recurrence of such contraventions; and

(i) BBY co-operated with ASX and did not contest these contraventions.