



## ASX Circular

Date: 22 March 2010

## Key topics

1. RBS Equities (Australia) 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 determined the following:

RBS Equities (Australia) Limited ('RBS') has been fined \$40,000 (plus GST) for contravening ASX Market Rule 5.7.3 in that it failed to ensure that 67 Cash Market Transactions to which it was a party were settled on the third Business Day following the date that the transactions were created on or reported to the Market.

The circumstances of the matter are detailed as follows:

At the time of the contravention RBS was known as ABN AMRO Equities Australia Limited ('ABN AMRO'). ABN AMRO has subsequently changed ownership and is now known as RBS.

On 12 December 2008 RBS entered into 67 transactions to sell a total of 3,966,667 VCR on behalf of a client. RBS was required to settle the 67 transactions within 3 Business Days being 17 December 2008. RBS traded on the belief that the client owned the securities. However, the client's stock had been loaned out by its custodian, and RBS was unable to settle the trades within 3 Business Days.

The relevant transactions remained outstanding until RBS settled a total of 3,792,137 VCR on 6 January (T+14) and 174,530 VCR on 7 January 2009 (T+15).

The express exceptions to ASX Market Rule 5.7.3 did not apply. The relevant Trading Participants did not agree to a later date for settlement. The transactions were not Forward Delivery transactions and ASX did not classify the transactions as 'deferred delivery' or 'deferred settlement' transactions.

The Tribunal noted the following:

- The strict obligation imposed on Trading Participants under the Rule is fundamental to ensure the integrity and efficiency of the system for the settlement of Market Transactions;
- Failure to comply with clearly prescribed settlement requirements has the potential to adversely affect and undermine confidence in the integrity of the processes for the settlement of Market Transactions;
- There is a need to provide and promote commercial certainty for both Participants and ASX in settlement of Market Transactions, as well as to minimise counterparty risk and market exposure associated with delays in settlement periods; and
- Timely settlement allows Market Participants to make contingent plans, thereby underpinning trading activity and contributing to the depth and liquidity of the financial markets.

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

- a) RBS contested the matter before the Tribunal;
- b) The internal escalation of the issue by RBS was inadequate. RBS could have exerted more pressure on its client to return the stock and should also have notified ASX Market Control of the expected settlement failure. RBS did not provide satisfactory evidence that it made enquiries as to the availability of stock to be borrowed, or do everything reasonably practicable to borrow stock so that it could facilitate settlement;
- c) The contravention was not self-reported (although there was no attempt to conceal the misconduct);
- d) The disciplinary history of RBS;
- e) The breach was unintentional and was an isolated incidence;
- f) The failure to settle did not result in any commercial or financial advantage to RBS and the stock was ultimately delivered for settlement, albeit on T+14 and T+15;
- g) RBS fully cooperated with ASX in the investigation of this matter; and
- h) The contravention is not systemic or indicative of a pattern of non-compliance with the ASX Market Rules.

#### Deterrence

For the reasons above the Tribunal has imposed a fine in the amount of \$40,000 (plus GST). In making this determination, the Tribunal has borne closely in mind the overarching purpose of the Market Rules and the place that those Rules have in the fulfilment of ASX's obligations under the Corporations Act to do all things necessary to ensure that the market is a fair, orderly and transparent market.

The Tribunal is of the opinion that this sanction will send an effective message of deterrence to other Market Participants. Market Participants should expect that penalties for non-compliance with ASX Market Rule 5.7.3, which affects the interests of ASX and is likely to undermine the confidence in the market, will be substantial. The sanction imposed by the Tribunal appropriately serves the interests of ASX and Market Participants in maintaining a market that is fair, orderly and transparent.

#### Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal was bound by the sanction guidelines (Annexure A to the Rulebook) in making its determination as to sanction in this matter.

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

The Tribunal considered that the contravention was serious as it threatened the integrity and efficiency of the market. The Tribunal considered the aggravating and the mitigating circumstances in this matter, and determined that a fine of \$40,000 was an appropriate sanction in all the circumstances.