



ASX Circular

Date: 3 July 2009

Key topics

1. Macquarie Securities (Australia) 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>

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DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal ('the Tribunal') has determined the following:

Macquarie Securities (Australia) Limited ('MSAL') has been fined \$20,000 (plus GST) for contravening ASX Market Rule 5.7.3 in that it failed to ensure that each Cash Market Transaction to which it was a party was settled on the Third Business Day following the date that the transaction was created on or reported to the market.

The circumstances of this matter are detailed as follows:

On 21 February 2008 ASX issued a market release to the effect that Jubilee Mines NL ('JBM') would be suspended from quotation from close of trading on 28 February 2008.

On 28 February 2008, MSAL entered into five (5) Market Transactions as Principal for the sale of JBM totalling 3,301 shares. JBM was suspended from quotation from close of trading 28 February 2008. MSAL was required to settle the sale transactions by 4 March 2008, pursuant to ASX Market Rule 5.7.3. MSAL did not settle these five (5) Market Transactions and subsequently cancelled the transactions on 8 & 9 April 2009.

On 28 February 2008, MSAL entered into one (1) Market Transaction as Agent for the sale of 1,532 JBM. JBM was suspended from quotation from close of trading 28 February 2008. On 4 March 2008 MSAL part settled 26 JBM shares pursuant to ASX Market Rule 5.7.3. On 17 April 2008 MSAL cancelled the unsettled balance of 1,506 shares.

The relevant Trading Participants did not agree to a later date for settlement with regard to the two transactions.

The transactions concerned were not Forward Delivery transactions and ASX did not classify the transactions as deferred delivery or deferred settlement.

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

Mitigating Factors

- (a) MSAL delivered JBM securities to the market in respect of 5 of the 6 transactions but these were presumably used by ACH to settle earlier trades;
- (b) In accordance with its usual practice, MSAL would have borrowed or bought securities to settle the transactions but it was unable to do so as a result of the trading suspension;
- (c) All of the transactions failed to settle as a result of third party custodians failing to deliver JBM securities. MSAL used its best endeavours to settle the transactions and sent daily messages to the custodians, however there were factors outside its control which prevented the transactions from settling;
- (d) From 18 March onwards, MSAL sought the assistance of ACH to settle the transactions by de-scheduling the relevant Chess messages;
- (e) MSAL indicated at an early stage that it would not contest the proceedings;
- (f) MSAL co-operated fully with ASX in relation to the conduct of the investigation and proceedings; and
- (g) The disciplinary history of MSAL.

Other Factors

(h) The importance of ASX Market Rule 5.7.3 and the consequences for contravening this rule.

In imposing a sanction, the Tribunal is mindful of the fact that 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 purpose of ASX Market Rule 5.7.3 is to promote liquidity in the market, and to minimise counterparty risk and market exposure associated with longer settlement periods. This rule governs the relationship between Market Participants and ASX in relation to settlement and promotes commercial certainty.

ASX Market Rule 5.7.3 is, in the Tribunal's view, one of the means by which ASX has sought to satisfy its statutory obligation to do all things necessary to ensure that the market, which it is licensed to conduct, is fair, orderly and transparent. The conduct of MSAL in failing to settle each cash market transaction to which it was a party, on the Third Business Day following the date that the transaction was created on or reported on the market, interfered with the integrity of the market.