

ASX Circular

Date: 7 July 2009

Key topics

1. Deutsche Securities (Australia) Limited

Reading List

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

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## DISCIPLINARY MATTERS

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

Deutsche Securities (Australia) Limited ('Deutsche') 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 the securities of Jubilee Mines NL ('JBM') would be suspended from quotation from the close of trading on 28 February 2008 following the lodgement of a compulsory acquisition notice.

On 22 February 2008 Deutsche, as Principal, entered into three (3) Market Transactions for the sale of a total of 12,651 JBM. Deutsche was required to settle the sale transactions by 27 February 2008, pursuant to ASX Market Rule 5.7.3. Deutsche failed to settle these three JBM sale transactions within the required timeframe.

On 25 February 2008 Deutsche, as Principal, entered into two (2) Market Transactions for the sale of a total of 7,672 JBM. Deutsche was required to settle the sale transactions by 28 February 2008, pursuant to ASX Market Rule 5.7.3. Deutsche failed to settle these two JBM sale transactions within the required timeframe.

On 26 February 2008 Deutsche entered into an arrangement whereby it lent 20,000 JBM that it held as Principal to an institutional broker. The loan was to assist the broker to facilitate settlement as part of the inter-broker market on a short-term basis. On 27 February 2008 Deutsche made a call on the broker to return the 20,000 JBM but the broker was unable to return the stock.

JBM was suspended from quotation from the close of trading on 28 February 2008. Deutsche continued to make other attempts to borrow the stock to facilitate settlement of its sale transactions of JBM, but was unable to do so. Deutsche cash settled the remaining outstanding settlement obligations on 2, 7 and 8 April 2008.

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.

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

### Mitigating Factors

- a) Deutsche made genuine attempts to obtain the stock so as to facilitate settlement. In accordance with its usual practice, Deutsche would have borrowed or bought securities to settle the transactions but it was unable to do so as a result of the trading suspension;
- b) No evidence that this contravention was systemic or indicative of a pattern of non-compliance with the ASX Market Rules by Deutsche;

- c) Deutsche co-operated with ASX in relation to the conduct of the investigation; and
- d) The disciplinary history of Deutsche.

#### Other factors

The Tribunal accepted that Deutsche had notice in relation to the compulsory acquisition which was circulated to the market on 21 February 2008. Prior to Deutsche entering into the relevant transactions, ASX had announced that JBM would be suspended from quotation from the close of trading on 28 February 2008. The sale transactions were entered into on 22 and 25 February 2008, and then on 26 February 2008 Deutsche entered into the lending arrangements with an institutional broker.

The Tribunal considers that Participants should mitigate their own risks. If they are trading as Principal and also entering into lending arrangements, they should know what they do and don't have on their books and they should be able to deliver in compliance with ASX Market Rule 5.7.3.

The standard expected of Market Participants is compliance with the Rules. The Tribunal did not accept Deutsche's position that the contraventions were not deliberate or reckless as the loan was on a short-term basis and was in keeping with the long standing market practice of stock lending amongst large institutional brokers. The Tribunal found that ASX Market Rule 5.7.3 imposes a strict obligation upon Market Participants to settle each Market Transaction to which they were a party on T+3. The purpose of ASX Market Rule 5.7.3 is to promote liquidity in the market; to provide and promote commercial certainty for both Participants and ASX in settlement of Market Transactions; and to minimise counterparty risk and market exposure associated with delays in settlement periods.

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 Deutsche in failing to settle each Market Transaction to which they were 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.

#### Deterrence

The Tribunal is of the opinion that this sanction will send a general deterrence message 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.