

ASX Circular

Date: 20 August 2009

Key topics

1. Goldman Sachs JBWere Pty 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:

Between 11 March 2004 and 16 October 2007 Goldman Sachs JBWere Pty Ltd ("GSJBW") failed to send confirmations to 114 clients after entering into 181 market transactions, in contravention of ASX Market Rule 7.9.1. GSJBW did not contest the contravention.

For this contravention the Tribunal imposed a fine of \$20,000 (plus GST).

The circumstances of this matter are detailed as follows:

GSJBW reported to ASX that a possible breach of ASX Market Rule 7.9.1 had occurred. The GSJBW report, dated 30 August 2007, was prepared in response to ASX's 2006 Financial Intermediary Self Assessment. GSJBW reported that confirmations had not been sent to a number of clients after entering into market transactions. The clients had been referred to GSJBW through financial intermediaries.

The facts indicated that the 114 clients involved were associated with one of three financial intermediaries. There was no evidence of client complaints, fraudulent activity, financial loss or other claims made due to the non-receipt of confirmations by any of the affected clients. GSJBW's longstanding relationship with the financial intermediaries predated the introduction of ASX's guidance requiring provision of confirmations to end clients.

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

- (a) The circumstances and facts of the matter;
- (b) The remedial actions undertaken by GSJBW to address the issue when identified and the fact that the relevant accounts were closed in 2007;
- (c) The unintentional and inadvertent nature of the contraventions;
- (d) The matter related to collective dealings on three accounts only and there was no evidence that this type of conduct was or is systemic within GSJBW;
- (e) The 114 clients were associated with one of three financial intermediaries, with whom GSJBW had had a longstanding relationship predating the introduction of ASX's guidance requiring provision of confirmations to end clients;
- (f) GSJBW's disciplinary history, having had one similar and one unrelated matter before the Tribunal;
- (g) GSJBW's advice to ASX that there were no client complaints, fraudulent activity, financial loss or other claims made due to the non-receipt of confirmations by any of the affected clients;
- (h) GSJBW fully co-operated with ASX Compliance and ASX Investigations in the investigation of the matter, and elected not to contest the contravention;
- (i) The timely sending of client confirmations is an important client protection safeguard against possible unauthorised trading activity; and

- (j) The failure to comply with the confirmation requirements under the ASX Market Rules has the potential to adversely affect the financial security of clients, and therefore has the potential to damage the integrity of the market.

Disciplinary Tribunal Sanction Guidelines

The Tribunal determined that this Contravention was classified as a Level 2 Serious Contravention, for which the applicable penalty range is \$20,000 - \$100,000 (plus GST). However, given the mitigating circumstances in this matter the Tribunal determined that a fine of \$20,000 (plus GST) was an appropriate sanction. Of considerable weight was the fact that GSJBW acted promptly to rectify the issues. The Tribunal recognised this as an important consideration, since one of the primary purposes of the imposition of sanctions is to deter future contraventions. The Tribunal also accepted that the incident was isolated as it related to dealings on three accounts only, and despite the time period of the contravening conduct there was no evidence that this type of conduct was or is systemic within GSJBW.