

ASX Circular

Date: 17 June, 2008

Key topics

1. Tolhurst 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:

Tolhurst Limited ("Tolhurst") has been fined \$25,000 (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 as follows:

On 25 July 2007, Tolhurst, as Principal, purchased 100,000 Elixir Petroleum Limited ("EXR") securities from its London based counterparty. On the same day Tolhurst sold 100,000 EXR on the ASX offsetting the 100,000 purchased as Principal.

Tolhurst was required to settle the selling transaction by 30 July 2007, pursuant to ASX Market Rule 5.7.3. Tolhurst did not settle 70,000 of the EXR until 19 September 2007, 32 days after the required settlement obligation.

On 27 July 2007, Tolhurst, as Principal, purchased 100,000 EXR from its London based counterparty. On the same day Tolhurst sold 100,000 EXR on the ASX offsetting the 100,000 purchased as Principal.

Tolhurst was required to settle the selling transaction by 1 August 2007, pursuant to ASX Market Rule 5.7.3. Tolhurst did not settle the 100,000 EXR until 19 September 2007, 30 days after the required settlement obligation.

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

- (a) The facts and circumstances of this matter;
- (b) Tolhurst did not contest the contravention;
- (c) Tolhurst assisted and co-operated with ASX in its investigation;
- (d) The disciplinary history of Tolhurst; and
- (e) 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 the 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 Tolhurst in failing to settle each cash 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.