AUSTRALIAN SECURITIES EXCHANGE

ASX Circular

Date: 21 September, 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

DISCIPLINARY MATTERS

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

Macquarie Securities (Australia) Limited ('Macquarie Securities') contravened ASX Market Rule 5.7.3 in that it failed to ensure that 11 Cash Market Transactions to which it was a party settled on the third Business Day following the date that the transactions were created on or reported to the Market.

Macquarie Securities did not contest the contravention before the Tribunal.

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

<u>The circumstances of this matter are detailed as follows:</u>

At the time of the contravention, Macquarie Securities was known as 'Macquarie Capital Securities (Australia) Limited'.

On 13 March 2008, ASX issued a market release to the effect that the securities of Symbion Health Limited ('SYB') would be suspended from quotation at the close of trading on 20 March 2008.

On 20 March 2008, Macquarie Securities entered into 13 Cash Market Transactions as deemed Principal for the sale of 35,854 shares in SYB. SYB was suspended from quotation from the close of trading on 20 March 2008.

Pursuant to ASX Market Rule 5.7.3, Macquarie Securities was required to settle its transactions in SYB by 27 March 2008. Eleven Cash Market Transactions totalling 8,089 SYB ('the Relevant Transactions') failed to settle until they were cancelled by Macquarie Securities on 17 April 2008.

The respective Trading Participants did not agree to a later date for settlement of the Relevant Transactions. The Relevant Transactions were not Forward Delivery Transactions. ASX did not classify the Relevant Transactions as 'deferred delivery' or 'deferred settlement' transactions.

<u>In determining sanction, the Tribunal took into account a number of matters, including the following:</u>

a) On 1 April 2008, Macquarie Securities sent messages to de-schedule all of the transactions entered into on 20 March 2008. On 1 and 2 April 2008, two of these messages were matched and the associated transactions cancelled. The counterparty did not enter corresponding de-scheduling messages for the Relevant Transactions until 17 April 2008;

b) The advice of Macquarie Securities that it would have borrowed or bought securities to settle the Relevant Transactions, but was unable to do so as a result of the trading suspension;

c) Where stock was not delivered by Macquarie Securities as a result of the issue above, trades were de-scheduled and cash adjustments were made with the buyers, Macquarie Securities paying any difference between the purchase price and takeover proceeds;

d) The size and purchase value of the Relevant Transactions;

e) The advice of Macquarie Securities that it was not aware of any person having incurred harm or loss as a result of the late settlements;

f) The additional preventative measures introduced since Macquarie Securities identified the issue above;

g) Macquarie Securities fully cooperated with ASX in relation to the conduct of the investigation, and elected at an early stage not to contest the proceedings; and

h) The disciplinary history of Macquarie Securities, as at the time this matter was commenced it had one unrelated disciplinary sanction recorded against it by the Tribunal.

The Tribunal noted that:

- 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 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 contravening conduct of Macquarie Securities had the potential to adversely affect and undermine the integrity of the Market.

Disciplinary Tribunal Sanction Guidelines

The misconduct occurred before 31 March 2008, that being the Effective Time under the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook ('Rulebook'). Therefore, the applicable Tribunal sanction guidelines are those contained in ASX Market Rules Guidance Note 18 which was in effect at the material time. 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). Taking into account the mitigating circumstances in this matter the Tribunal determined that a fine of $20,000 was an appropriate sanction. The Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and Market Participants.