



ASX Circular

Date: 24 November 2008

Key topics

1. Merrill Lynch Equities (Australia) Limited

Reading List

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

Contact

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DISCIPLINARY MATTERS

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

Merrill Lynch Equities (Australia) Limited ("MLEA") has been fined a total of \$70,000 plus GST in respect of the following contraventions:

Between 23 and 25 May 2007:

- (a) ASX Market Rule 19.1.2 in that MLEA executed Short Sales of Greenland Minerals and Energy Limited formerly known as Gold Company Limited ("GGG") which was not in accordance with Section 19 of the ASX Market Rules.
- (b) ASX Market Rule 19.6.1 in that it did not advise ASX by 9:00am of its net short sale position as at 7:00pm on the previous trading day with respect to transactions in the securities of GGG.
- (c) 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, with respect to transactions in the securities of GGG.

Between 22 and 30 August 2007:

- (d) ASX Market Rule 19.6.1 in that it did not advise ASX by 9:00am of its net short position as at 7:00pm on the previous trading day with respect to transactions in the securities of APA Group ("APA") to which it was a party.
- (e) 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, with respect to transactions in the securities of APA.

The Circumstances of the matters are as follows:

Transactions in GGG Securities ("First matter")

MLEA engaged in the short sale of Greenland Minerals and Energy Limited formerly known as Gold Company Limited fully paid ordinary shares ("GGG") on 23 May 2007 and 25 May 2007.

On those dates, MLEA entered into Market Transactions as Principal to sell a total of 475,000 GGG. At the time of each sale, MLEA did not have a presently exercisable and unconditional right to vest 275,000 GGG in the buyer. Further, GGG was not an Approved Short Sale Product or a Public Security and accordingly, MLEA was not entitled to engage in the short selling of GGG.

MLEA did not report the sales of GGG to the ASX in accordance with ASX Market Rules, and failed to settle the sales of GGG on the third business day following the dates that the transactions were created on or reported to the market.

The sales of GGG were partially settled on 20 June 2007, 21 June 2007, 23 June 2007 and completed on 26 June 2007.

The Tribunal imposed a fine of \$40,000 plus GST in respect of the above contraventions in respect of transactions in GGG.

Transactions in APA Securities ("Second Matter")

MLEA engaged in the short sales of APA between 22 August 2007 and 30 August 2007. Between those dates, MLEA entered into Market Transactions to sell, as Principal as well as on behalf of Merrill Lynch (Australia) Futures Limited ("MLAF"), 1,991,155 APA but only borrowed 458,019 APA, leaving 1,533,136 APA uncovered.

MLEA did not report the sales of APA to the ASX in accordance with ASX Market Rules, and failed to settle the sales of APA on the third business day following the dates that the transactions were created on or reported to the market.

The sales of APA were settled on 31 August 2007.

The Tribunal imposed a fine of \$30,000 plus GST in respect of the above contraventions in respect of transactions in APA.

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

- The circumstances and facts of the matters;
- The importance of ASX Market Rules 19.1.2, 19.6.1 and 5.7.3 in noting that the failure to comply with the requirements of the relevant Rules has the potential to adversely affect and undermine the integrity of the market and the settlement system;
- The First Matter was identified by ASX, and its enquiries led to MLEA's discovery of the contraventions in the Second Matter and notification of them to ASX;
- MLEA's delay in reacting appropriately as soon as MLEA became aware of the First Matter;
- The size of trades in respect of the First Matter;
- MLEA took corrective action and fully assisted and co-operated with ASX in relation to the investigation of the matters;
- The steps taken by MLEA to prevent any further breaches;
- MLEA indicated at an early stage that they would not contest the matters;
- MLEA self reported the Second Matter; and
- MLEA's disciplinary history.