



ASIC

Australian Securities & Investments Commission

REPORT 43

Market assessment report: Golden Circle Limited

June 2005



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Annual assessment (s794C) report

Golden Circle Limited
ACN 054 355 618

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Executive summary

This report is an assessment of compliance by Golden Circle Limited ("GCL") with its obligations under s792A(c) of the *Corporations Act 2001* (Cth) (Act). This is our first assessment of GCL.

Section 794C of the Act requires the Australian Securities & Investments Commission (ASIC) to assess how well a licensed market operator is complying with its obligations as the holder of a markets licence and, in particular, whether a market operator has adequate arrangements for supervising the market it operates.

In this report we present our findings that GCL has adequate arrangements for the supervision of its market in accordance with its obligations under the Act.

Section 1: Background

1.1 Licensee

GCL is a Queensland based pineapple and vegetable growers cooperative that operates a market in GCL securities. Eligibility to hold GCL ordinary shares and participate in the GCL market is restricted to persons admitted to the cooperative as a grower of pineapples or vegetables. The admission prerequisites for growers are based on commercial and horticultural criteria relevant to the GCL business as a fruit and vegetable cooperative. Once admitted as a GCL grower, that person may, at their discretion, invest in GCL ordinary shares.

When GCL obtained its market licence on 17 August 2004, it operated a market for A Class and B Class shares. On 10 December 2004 shareholders approved a capital restructure that led to the conversion of A Class and B Class shares into ordinary shares. The board of directors resolved to adopt these changes on 20 January 2005. The GCL market now only operates in relation to GCL ordinary shares.

On 9 March 2005 GCL announced that it had reached agreement with Babcock & Brown Limited ("Babcock & Brown") and its wholesale private equity fund Direct Investment Fund ("DIF"), to subscribe for \$50 million in convertible notes. At a General Meeting of GCL shareholders held on 1 April 2005, shareholders voted in favour of a number of resolutions which will enable the company to issue the convertible notes to Babcock & Brown and prepare for an eventual public listing.

Between 17 August 2004 and 12 May 2005 there have been 12 trades with a total value of approximately \$228,000.

1.2 The assessment process

GCL was granted an Australian market licence ("AML") on date 17 August 2004. Prior to this date GCL was operating an exempt market under section 791C of the Act.

Section 794C(2) of the Act requires ASIC to assess whether GCL complies with its obligations in s792A(c) of the Act. In addition, s794C(1) permits ASIC to extend the scope of its annual report to assess how well GCL complies with any or all of its obligations under Ch 7 of the Act.

How we conducted this assessment

In conducting our assessment, we took into account the matters set out in ASIC Policy Statement 172 *Australian market licences: Australian operators* [PS 172]. PS 172 explains how ASIC will assess how well a

market licensee is complying with its obligations. This is ASIC's first s794C assessment of GCL.

In conducting our assessment we:

- analysed information we received from and about GCL in the ordinary course of our dealings with GCL;
- reviewed GCL's most recent annual report and GCL's annual regulatory report under s792F;
- sought additional information from GCL for the purpose of this assessment;
- analysed information from external sources, including media commentary and material on GCL's website;
- monitored the operation of the market throughout the period;
- undertook an onsite visit to GCL's Brisbane premises and interviewed the personnel responsible for the day-to-day operation of the market; and
- also considered how well GCL might comply with its obligations in the future.

GCL had an opportunity to view and comment on this report. We sought GCL's comments on both the factual matters set out in this report and our conclusions.

Section 2: Observations and Recommendations

2.1 Supervision of the market

After making our assessment, ASIC concludes that GCL has adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c) of the Act.

This conclusion is based on the following observations drawn from information gathered during the assessment process:

1. We did not identify any market failures or disruptions since the commencement of the GCL market on 17 August 2004.
2. Ownership of GCL ordinary shares, and hence participation in the GCL market is restricted to fruit and vegetable growers who supply fruit and vegetables to the GCL cooperative. As a consequence, participants in the GCL market are more likely to be knowledgeable about the business and the prevailing business environment underlying GCL securities than would be expected of non-grower participants.
3. The prerequisites for becoming a participant in the GCL market are largely horticultural in nature and are not driven by a commercial interest on the part of GCL to advance the scale or profitability of its activities as a market operator. As such GCL does not have some of the identifiable conflicts of interest that would otherwise arise between a market operator's commercial goals and its obligation to supervise its market.
4. The GCL share transfer committee members, who oversee on-market transfers of GCL, are knowledgeable of the industry and its participants.
5. The operational and supervisory procedures in place are adequate to deal with all identified events and processes.
6. The GCL staff member responsible for supervision at an operational level is experienced and demonstrated a good understanding of, and commitment to, implementing GCL's supervisory obligations.

2.2 Other observations

Two notable but minor events arose prior to our assessment that reflected on GCL's supervisory practices. Both issues were raised with GCL when ASIC became aware of them and were addressed by GCL promptly.

Disclosure of Information

In February 2005 a number of media articles reported that Babcock & Brown was in advanced negotiations to buy a stake in GCL. Further, on 28 February 2005 Babcock & Brown made an announcement to the Australian Stock Exchange that it, through its wholesale private equity fund Direct Investment Fund ("DIF"), was the preferred tenderer to subscribe for \$50 million in convertible notes issued by GCL.

On that date ASIC advised GCL that it should be mindful of its continuous disclosure obligations under section 675 of the Act, and condition 9 of its AML, and should consider whether an announcement relating to this issue should be made to ASIC and shareholders. This issue was again raised with GCL on 4 March 2005.

GCL lodged the required document with ASIC and made an announcement on its website on 9 March 2005. At the relevant time GCL's market was suspended because of the adoption of full year accounts by its Board. Consequently, the possibility of an uninformed market developing was minimal.

However our concern is to ensure that GCL release material information to the market in a timely manner so as to avoid such adverse possibilities. Discussions with GCL's company secretary during the assessment process confirmed that GCL now has a greater awareness of this requirement. Further, we were advised that GCL is currently recruiting in-house legal counsel who will assume this responsibility, along with the company secretarial role.

Rule changes

In January 2005 ASIC became aware that GCL had made changes its operating rules and procedures to reflect shareholders approval of a capital restructure that led to the conversion of A Class and B Class shares into ordinary shares. However, GCL had not at that stage lodged a written notice with ASIC in accordance with the requirement of subsection 793D(1). This issue was raised with GCL on 19 January 2005. On 24 January 2005, GCL formally lodged amendments to its operating rules.

As we indicated to GCL at the time our preference is to see market operators lodge draft rule amendments prior to formal lodgement so as to

minimise situations in which market uncertainty may arise because changes made to its operations cease to have effect by virtue of the operation of subsection 793D(2) of the Act.

Discussions with GCL's company secretary during the assessment process confirmed that GCL now has a greater awareness of this requirement. ASIC was also informed that minutes of meetings of the board of directors are routinely reviewed to ensure that appropriate notifications are given to ASIC. Further, as stated above, we were advised that GCL is currently recruiting in-house legal counsel who will assume this responsibility, along with the company secretarial role.