



ASIC

Australian Securities & Investments Commission

REPORT 117

**Market assessment report:
Golden Circle Limited
ACN 054 355 618**

January 2008

About this report

This report summarises the third assessment of Golden Circle Limited (GCL) by the Australian Securities and Investments Commission under s794C of the *Corporations Act 2001* (Cth) (Corporations Act).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Previous reports on GCL

GCL was granted an Australian market licence on 17 August 2004.

Report number	Date released
REP 43	June 2005
REP 98	August 2007

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Key findings and recommendations

Key findings

- 1 We are satisfied that Golden Circle Limited has adequate arrangements for supervising its market under s792A(c) of the Corporations Act.
- 2 GCL made appropriate changes to its continuous disclosure policies and practices and its market supervision practices in response to recommendations we made in our 2006 assessment. Based on information supplied for the 2007 assessment and discussions held with GCL staff members on site, we are satisfied that improvements made by GCL address our previous concerns. To assist GCL with ongoing management of its disclosure obligations and market supervision practices, we have made some further recommendations in these areas.

Recommendations

- 3 We recommend that GCL:
 - continue to build and develop its continuous disclosure framework. As part of this, we recommend that GCL ensure that all relevant information about disclosure decisions (and non-disclosure decisions) is recorded, including reference to any external legal advice obtained; and
 - ensure that it sets clear and relevant parameters for any external reviews/audits conducted of its market.

Planned listing on National Stock Exchange of Australia Limited (NSEAL)

- 4 In December 2007, GCL announced plans to list on NSEAL in early 2008. This listing is part of a recapitalisation and refinancing agreement that GCL entered into with Anchorage Capital Partners in October 2007 (the Anchorage Agreement).

A The assessment

Key points

ASIC conducts annual assessments of market licensees, because we are required to do so under s794C of the Corporations Act. We also conduct annual assessments of clearing and settlement facility licensees under s823C.

The scope of our assessment must include the obligations found in s792A(c), but we can include other Ch 7 obligations too.

We use the licensee's self-assessment reports, information from its previous assessments, our own observation of the licensee's performance, market intelligence and other things to form a view of how well the licensee has operated its market.

Purpose and scope

- 5 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year (s794C(2)).
- 6 A market licensee is required to have adequate arrangements for supervising the market (under s792A) including for:
 - handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the market is fair, orderly and transparent;
 - monitoring the conduct of participants on or in relation to the market; and
 - enforcing compliance with the market's operating rules.
- 7 In addition, we are permitted to extend the scope of our assessment to review how well a market complies with any or all of its obligations under Ch 7 (s794C(1)).

Background

- 8 GCL was granted an Australian market licence (AML) on 17 August 2004. The licence permits GCL to operate a market in its own shares. Participation in the market is limited to growers of pineapples or vegetables who have been admitted by the company as GCL growers.

- 9 Since the 2007 assessment was conducted, we have discussed with GCL proposed changes to its operating rules, constitution and AML, to allow non-growers to hold GCL shares. However, the subsequent implementation of the Anchorage Agreement and planned NSEAL listing now mean that these changes are no longer necessary.
- 10 Until recently, the participation restrictions in GCL's market have contributed to traditionally low trading levels in the market. For instance in the two calendar years ended December 2006 and 2005, annual market turnover was about \$370K and \$280K respectively.
- 11 Trading volumes have increased in recent times, due to activity that is believed to relate to interest in GCL's business shown by other parties, including the following:
- an attempt by Merim Pty Ltd (Merim) to gain effective control of GCL by acquiring the voting rights attached to GCL shares;
 - a conditional proposal to acquire 100% of GCL shares by Coca Cola-Amatil Limited (CCA); and
 - the Anchorage Agreement.
- 12 At the time of the assessment, GCL was examining each of these alternatives, but subsequently obtained shareholder approval to proceed with the Anchorage Agreement, which was implemented with effect from 31 October 2007. On this date, among other things, 44,356,752 ordinary GCL shares were issued to Anchorage Golden Circle Pty Ltd.

Our methodology

Our assessment process

- 13 A market licensee's obligations are ongoing. Whether it is likely to comply with its obligations in the future cannot be judged merely by reference to its past compliance.
- 14 We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a market licensee has in place for supervising its market in accordance with its obligations under the Corporations Act at the time of the assessment; and
 - identify issues, which in our view need, or may need, to be addressed to ensure ongoing compliance.

What we considered

- 15 In conducting our assessment we considered:

- GCL's most recent annual regulatory report under s792F;
- information we received from and about GCL in the ordinary course of our dealings with GCL as a market licensee, including:
 - information received as part of the rule amendment process;
 - interaction with GCL on a range of operational issues;
 - referrals of serious contraventions; and
 - GCL's most recent annual report;
- information from external sources, including media commentary and reports published by GCL;
- the operation of the market throughout the period;
- internal GCL material, including disciplinary and investigation files, internal reports and information collected by GCL group on a continuous basis;
- discussions with senior GCL management; and
- comments made in interviews or discussions with a range of GCL personnel.

16 In conducting our on-site visit, we:

- interviewed GCL personnel;
- reviewed policies and procedures for the conduct of GCL's market in general and their supervisory responsibilities in particular; and
- reviewed extensive material provided by GCL under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

17 We served a notice that required GCL to give us documents about a wide range of GCL activities from 17 August 2006 until 23 July 2007. This was the relevant period we assessed for the report. On 14 August 2007, we also attended GCL's offices in Northgate, Queensland and during this on-site phase of the assessment we reviewed GCL operational records and spoke to GCL personnel involved in operating and supervising the market.

Consultation

18 GCL has had the opportunity to view and comment on the findings and recommendations contained in a draft version of this report. When appropriate, this final report reflects GCL's responses.

What we focussed on for this assessment

19 Our assessment involved a review of the changes made by GCL in response to our last assessment report and the issues that came to our attention during this assessment period.

- 20 In our reports for the years 2005 and 2006, we noted some instances when GCL had not complied with its obligation to disclose price sensitive information to the market as soon as practicable. Our concern was to ensure that GCL releases material information to the market in a timely manner.
- 21 GCL has since increased its focus on continuous disclosure. Greater attention has been given to assessing potentially price sensitive information at both the audit committee level and the board level. GCL also frequently seeks the advice of a specialist partner at Minter Ellison about disclosure matters. Even if the GCL board has formed a view on whether disclosure is necessary, a second opinion is often sought from Minter Ellison.
- 22 As part of this assessment, we reviewed all disclosures made to GCL's market and all financial statements issued by GCL since our last assessment.
- 23 We also reviewed GCL's processes and procedures for identifying price sensitive matters, determining whether disclosure is required and documenting such decisions by the company.
- 24 In addition to continuous disclosure matters, we discussed GCL's current key issues and priorities with management and operational staff, to enhance our understanding of the GCL market.

B Our observations and recommendations for GCL

Key points

We consider GCL's arrangements for supervising its market are adequate, including arrangements for:

- handling conflicts between the commercial interests of the market licensee and the need for the market licensee to ensure that the market is fair, orderly and transparent;
- monitoring the conduct of participants on or in relation to the market; and
- enforcing compliance with the market's operating rules.

GCL has adequately addressed the problems in its continuous disclosure policies, procedures and practices that were highlighted in our previous reports.

Continuous disclosure

- 25 GCL has implemented policies and procedures that address concerns we previously raised about GCL's management of its continuous disclosure obligations under s675 of the Corporations Act, and as a condition of GCL's AML. This report includes observations and recommendations to assist GCL with the ongoing maintenance and development of its continuous disclosure framework and market supervision.

Decision making about disclosure matters

- 26 GCL has an obligation under s675(2) of the Corporations Act and section 9 of its AML to disclose as soon as practicable information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of its securities. Sub regulation 6CA.1.0.1 of the Corporations Regulations 2001 (Cth), provides that the disclosure of information is not required if:
- (a) a reasonable person would not expect the information to be disclosed; and
 - (b) the information is confidential; and among other things
 - (c) the information is about a matter of supposition, is not definite enough or is about an incomplete proposal.
- 27 GCL implemented a continuous disclosure policy (policy) in July 2005. The policy makes the company secretary the disclosure officer and states that he is responsible for, among other things, ensuring officers and employees

understand the continuous disclosure obligations. The policy also states that the disclosure officer and GCL management are in the first instance responsible for deciding if information should be disclosed, and gives samples of types of information that may be price sensitive.

Board meetings and documenting disclosure decisions

28 At each board meeting there is a standing agenda item which requires the board to consider whether any of the matters discussed in the meeting ought to be disclosed to the market and ASIC.

29 In its 2006 assessment report, we recommended that GCL:

- (a) make records of all decisions to disclose or not to disclose information to the market; and
- (b) implements a formal policy for documenting the issues considered and the reasons supporting each decision.

30 For the 2007 assessment, GCL supplied evidence of the board's deliberations and reasons for its decisions about potential disclosure matters. This evidence was either part of the board meeting minutes or was an attached file note. This documentation described each potential disclosure matter considered and the basis for determining whether:

- (a) a matter is price-sensitive; and
- (b) disclosure is necessary.

Recommendation 1

ASIC recommends that GCL continue to:

- record board decisions to disclose (or not disclose) potentially price sensitive information
- record the consideration given to these matters; and
- ensure a continued transparent and consistent approach to disclosure.

Identifying matters that require disclosure

31 As noted in our 2006 assessment report, it is difficult to establish the materiality of information in GCL's market, given the limited number of eligible market participants/shareholders and the generally low trading levels, to date. The actions already taken by GCL demonstrate that GCL has improved its policies and procedures for reviewing and determining which matters require disclosure.

32 As part of this assessment we reviewed all disclosures made by GCL since the last assessment and consider that the company has adequately disclosed potentially price sensitive matters during this period.

Market supervision

Oversight of market supervision and investigations

- 33 A market licensee is required to have adequate arrangements to supervise its market (s792A(c)). The company secretary in practice performs most functions associated with supervising the GCL market. According to GCL procedures, the Audit and Risk Committee's role is to supervise and oversee the procedures of the market and it can authorise a delegate to perform this review and report to the committee.
- 34 In the 2006 assessment, we noted that the GCL company secretary reviewed and reported on his own actions in supervising the market (i.e. he was reviewing and reporting on his own performance). At the time, we recommended that an independent and objective party, namely the Audit and Risk Committee, should review GCL's market supervision, and that GCL should properly document any investigations conducted into market activities.
- 35 For the 2007 assessment, GCL supplied evidence of biannual (6 monthly) reviews of its market supervision, conducted by the Risk Manager of the Audit and Risk Committee. For each review, details of the matters reviewed and findings were documented. This process adds the independence and objectivity that we consider a necessary part of any review of market supervision. It also assists GCL to demonstrate what investigations and checks it has done to ensure its market supervision is conducted effectively and in accordance with its own policies and procedures.

Audits of ongoing compliance with obligations

- 36 As part of the information for the 2007 assessment, GCL supplied a copy of an audit report by its external auditors for the year ended 31 December 2006. We noted that the report states that the operations of the 'Exempt Stock Market' (a term which is no longer current) were audited to determine compliance with the operating rules dated 17 August 2004.
- 37 GCL subsequently discussed this matter with its auditor, receiving assurance that this was a referencing error in the written report only and the audit was performed against current requirements and obligations.

Recommendation 2

We recommend that for future audits, GCL should clarify with its auditor what its current obligations and requirements are as a market operator and AML holder.

Key terms

Term	Meaning in this document
Corporations Act	<i>Corporations Act 2001</i> (Cth)
AML	Australian Market Licence
ASIC	Australian Securities & Investments Commission
GCL	Golden Circle Limited
