



ASIC

Australian Securities & Investments Commission

REPORT 136

Market assessment report: Golden Circle Limited ACN 054 355 618

August 2008

About this report

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

[The Minister cancelled Australian Market Licence (Golden Circle Limited) at the request of GCL, with a commencement date of 8 August 2008.

This report was prepared at the time that ASIC advised the Minister that GCL's licence should be cancelled, but prior to the Minister agreeing to cancel the licence.]

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
REP 117	January 2008

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Key findings

Key findings

- 1 We are satisfied that during the period 19 August 2007 to 4 March 2008 (assessment period), Golden Circle Limited had adequate arrangements for supervising its market under s792A(c) of the Corporations Act.
- 2 Pursuant to restructuring and refinancing agreements entered into by GCL in October 2007, trading in GCL's market was suspended at 4:00pm on 4 March 2008 and will not recommence. As at 25 March, all trades that were matched on GCL's market prior to suspension of trading had been processed.
- 3 GCL was admitted to the official list of National Stock Exchange of Australia Limited (NSX) on 10 March 2008, after GCL shareholders approved constitutional changes necessary to allow public on-market trading of GCL shares. GCL shares commenced quotation on NSX on 19 March 2008.
- 4 On 14 March 2008, GCL requested the Minister cancel its Australian Market Licence (AML) pursuant to s797B(c) of the Corporations Act.

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)).
- 8 This year's assessment focused on GCL's compliance with its obligations during the assessment period, and does not contain any recommendations in respect of the future operation of GCL's market. We consider this to be an appropriate approach given that GCL securities have listed on NSX and it has requested the cancellation of its AML.

Background

- 9 GCL was granted an AML on 17 August 2004. The licence permits GCL to operate a market in its own shares, with market participation limited to growers of pineapples or vegetables who have been admitted by the company as GCL growers.
- 10 Until 31 October 2007, GCL's constitution prohibited a holder of GCL shares from transferring or disposing such shares to any party but a grower, as defined under that constitution.
- 11 At a meeting held on 29 October 2007, GCL shareholders approved a recapitalisation and refinancing proposal by Anchorage Capital Partners Pty Limited (operating through Anchorage Golden Circle Pty Ltd) . The proposal was implemented on 31 October 2007. Implementation involved:
- the removal of the constitutional requirement that a holder of GCL shares may only transfer or dispose of such shares to a grower;
 - the issue of 44,356,752 ordinary shares in GCL to Anchorage Golden Circle Pty Ltd; and
 - the commencement of refinancing arrangements with GE Commercial Corporation Australia Pty Ltd (GE).
- 12 By notice of meeting and explanatory memorandum to shareholders dated 11 February 2008, GCL advised of its intention to suspend its market at 4:00pm on 4 March 2008. GCL gave effect to this intention by suspending trading in its market on the stated date and time.
- 13 Although GCL's constitution from 31 October 2008 permitted shareholders to dispose of shares to non-growers, its AML did not permit this trading. As a result, no transactions involving non-growers occurred on the GCL market from 31 October 2008 until suspension on 4 March 2008.
- 14 On 7 March 2008, GCL shareholders approved the adoption of a new constitution in order to permit GCL to list on NSX.
- 15 Upon receiving shareholder approval to adopt a new constitution and permission to list on NSX, on 11 March 2008 GCL advised its shareholders that trading in its market had ceased. GCL was admitted to the official list of NSX on 10 March 2008 and commenced official quotation on 19 March 2008.
- 16 By letter dated 14 March 2008, GCL requested that the Minister cancel its AML pursuant to s797B(c) of the Corporations Act.
- 17 ASIC has conducted a final assessment of the GCL market, which covers the period 19 August 2007 to 4 March 2008, being the last day of trading on the market.

Our methodology

Our assessment process

- 18 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. However, in the case of GCL, we note that it has ceased to operate its market and has requested the cancellation of its AML.
- 19 Therefore, we have used the assessment process to reach conclusions about the adequacy of the arrangements that GCL had in place for supervising its market in accordance with its obligations under the Corporations Act and its AML, during the assessment period.

What we considered

- 20 In conducting our assessment we considered:
- GCL's s792F annual regulatory report covering the period 1 January 2007 to 25 March 2008;
 - 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;
 - disclosures made by GCL; and
 - GCL's most recent annual report
- Note: GCL's last annual report was for the 12-month period ended 31 December 2006. GCL recently amended its financial year-end from 31 December to 30 June and it is currently in an 18-month transitional reporting period. It will not produce another annual report until after 30 June 2008.
- information from external sources, including media commentary and reports published by GCL;
 - the operation of the market throughout the period; and
 - GCL's responses to our questionnaire.

- 21 We issued a letter to GCL on 11 March 2008, containing a series of questions relating to GCL's compliance with its obligations as a licensee over the assessment period. Given that GCL had effectively ceased to operate its financial market at the time, we did not conduct an on-site visit.

GCL has had the opportunity to view and comment on the findings contained in this report and where applicable, GCL's comments have been factored into the text.

What we focused on in this assessment

- 22 Given that GCL had ceased to operate its market and has applied for cancellation of its AML, we adopted a retrospective focus for this assessment. Accordingly, this report addresses GCL's compliance with its obligations over the assessment period and makes no recommendations.

- 23 Our assessment involved a review of GCL's actions in response to our last assessment report.

- 24 We noted in our last assessment report that GCL had taken appropriate action to address ASIC's previous concerns regarding its approach to continuous disclosure. In this assessment we examined whether GCL's continuous disclosure practices were adequate during the assessment period.

B Our observations

Key points

We consider GCL's arrangements for supervising its market to be 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.

Continuous disclosure

- 25 GCL has an obligation under s675(2) of the Corporations Act and condition 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. 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.
- 26 We reviewed the disclosures made by GCL during the assessment period and consider that the company has adequately disclosed potentially price sensitive matters.

Market supervision

Oversight of market supervision

- 27 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.

- 28 The most recent report on GCL's market was presented to the Audit and Risk Committee on 30 August 2007. The report did not identify any significant issues or concerns. It concluded as follows:
- GCL's supervision of participants' conduct in relation to the market was adequate;
 - there was no grounds for concern that market participants had not complied with the operating rules;
 - there had been no disputes and therefore the assessment, investigation and settlement of market disputes had not occurred;
 - the recording and disclosure of transaction and market information was correct; and
 - the provision of information about market processes occurred according to the operating rules and procedures.
- 29 No changes were made to GCL's policy and procedures that deal with supervision and/or enforcement of its operating rules during the assessment period.
- 30 We consider that GCL had adequate resources and arrangements in place to operate and supervise its market over the assessment period.

Key terms

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