



## ASX Circular

**Date:** 30 May, 2005

**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**

Martin Kinsky

**Telephone**

(02) 9227 0419

Australian Stock Exchange Ltd  
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>

No responsibility is accepted for any inaccuracies contained in the matter published.

## DISCIPLINARY MATTERS

The Australian Stock Exchange Limited's Disciplinary Tribunal (**"the Tribunal"**) has determined the following:

Merrill Lynch Equities (Australia) Limited (**"MLEAL"**) has been fined \$125,000.00 (plus GST) and has voluntarily agreed, and the Tribunal has so ordered, to undertake an Education and Compliance Program for having contravened ASX Business Rule 13.5.1 in its dealing in the quoted securities of Promina Group Limited (**"PMN"**) as principal on 12 May 2003 (**"the conduct"**).

MLEAL, without admission, did not contest the contravention before the Tribunal. The circumstances of this matter are detailed as follows:

At 12:00pm on 12 May 2003, official quotation of PMN on ASX commenced. PMN opened at \$1.94 and was traded in large volumes and initially declined in price. By around 12:23pm on this date, MLEAL, predominantly via one employee (**"the Employee"**), had established a principal short position of 32,187,549 PMN shares at an average prices of \$1.90 (with a total value of \$61,197,295.00) primarily in anticipation of client sell orders, which did not eventuate.

From 12:23pm onwards the price of PMN began to increase. As the price increased, MLEAL entered a number of large Bids and six Asks in PMN at various price levels (**"the six Asks"**). Five of the six Asks did not trade. The six Asks (with a total volume of 42,500,000 PMN) were for disclosed and undisclosed volumes, some were entered at priority Ask price and others were entered away from the priority prices. None of the six Asks traded immediately and all were either amended away from priority and/or subsequently cancelled.

Between 12:23pm and 2:56pm, MLEAL bought a large volume of PMN shares and, by the end of that period held a long position of 4,947,959 PMN shares. The PMN shares purchased by MLEAL during that period were purchased at prices between \$1.91 to \$1.98.

The Tribunal is concerned with the conduct of MLEAL in relation to PMN on 12 May 2003 as the Tribunal is satisfied that an observer of the market, seeing the entry and amendment of the six Asks may reasonably have apprehended that there was a possibility that the six Asks were entered with a view to weighing on the prices of PMN whilst MLEAL closed out a short position.

Nonetheless, the Tribunal is satisfied that the trading had the potential to be viewed as involving inappropriate trading and, because of this potential, is of the view that MLEAL's conduct could reasonably be considered as likely to be prejudicial to the interest of the Exchange in contravention of ASX Business Rule 13.5.1.

In determining the penalty to be imposed, the Tribunal took into account the following matters:

- (a) ASX Guidance Note 8/00;
- (b) previous correspondence of the ASX;
- (c) internal MLEAL training material;
- (d) the circumstances of the contravention;
- (e) the volume and price of the trading by MLEAL on 12 May 2003;
- (f) MLEAL was trading as principal; and
- (g) MLEAL has voluntarily undertaken, and the Tribunal so orders, to implement an education and compliance program in regard to principal trading practices.