



ASX Circular

Date: 22 January 2007

Key topics

1. DJ Carmichael Pty Limited

Reading List

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

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

DISCIPLINARY MATTERS

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

DJ Carmichael Pty Ltd ("DJ Carmichael") between 10 June 2005 and 8 November 2005 ("the Relevant Period"), whilst acting for Mineral Securities Limited ("Mineral Securities") in an On-market buy-back of its traded products, namely Mineral Securities fully paid ordinary shares ("MSX"), accepted and transacted orders to sell MSX, without the knowledge of its Compliance Department, in contravention of ASX Market Rule 20.5.1 by:

- (i) failing to advise its clients selling MSX that DJ Carmichael was acting for Mineral Securities in the On-market buy-back of MSX and was unable to give sellers advice in respect of the proposed sale of MSX; and
- (ii) giving advice to clients with respect to their proposed sale of MSX.

DJ Carmichael elected not to contest the contravention before the Tribunal.

The Tribunal imposed a fine of \$30,000 (plus GST) in respect of this contravention.

In determining penalty the Tribunal took into account the following factors:

- (a) the facts and circumstances of the contravention;
- (b) the disciplinary history of DJ Carmichael;
- (c) the failure of DJ Carmichael to have in place appropriate procedures and protocols for dealing with On-market buy-backs;
- (d) the fiduciary duty a broker owes its clients;
- (e) DJ Carmichael self-reported; and
- (f) DJ Carmichael gave full co-operation to the ASX.

The circumstances of this matter are detailed as follows:

On 11 May 2005 Mineral Securities announced an On-market buy-back, pursuant to Chapter 2J of the Corporations Act 2001 (Cth) of up to one (1) million fully paid ordinary shares of MSX ("the MSX buy back"). DJ Carmichael was appointed as the buy-back broker for the MSX buy-back, which was announced to be over an unlimited duration commencing on 26 May 2005. The first buy-back transaction occurred on 10 June 2005.

During the Relevant Period, DJ Carmichael as the buy-back broker completed thirty-two (32) on-market transactions pursuant to the MSX buy-back where it failed to advise its clients selling MSX that it was also acting for Mineral Securities in the On-market buy-back of MSX, and was unable to give sellers advice in respect to their proposed sale of MSX.

Further, during the Relevant Period DJ Carmichael completed an additional eleven (11) market transactions where:

- i. DJ Carmichael failed to advise its clients selling MSX that DJ Carmichael was acting for Mineral Securities in the On-market buy-back of MSX and was unable to give sellers advice in respect to their proposed sale of MSX; and
- ii. DJ Carmichael gave advice to clients with respect to their proposed sale of MSX.

Neither DJ Carmichael's Compliance nor Corporate Departments were notified of DJ Carmichael's role in the buy-back at this time.

On 24 February 2006, Mineral Securities issued a Final Share Buy-Back Notice which stated that 600,000 MSX had been bought-back on-market. DJ Carmichael acted as the buy-back broker for Mineral Securities for the entire period, 26 May 2005 to 24 February 2006.