



## ASX Circular

Date: 29 March 2006

## Key topics

1. Merrill Lynch Equities (Australia) Limited
2. Berndale Securities Limited

## Reading List

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

## Contact

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

## DISCIPLINARY MATTERS

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

- (a) Merrill Lynch Equities (Australia) Limited ("MLEAL") has been fined a total of \$5,000 plus GST in respect of its contravention of ASX Market Rule 7.19.1(c) and its predecessor (old ASX Business Rule 3.12(2)); and
- (b) Berndale Securities Limited ("Berndale") has been fined a total of \$5,000 plus GST in respect of its contravention of ASX Market Rule 7.19.1(c) and its predecessor (old ASX Business Rule 3.12(2)).

MLEAL and Berndale (together referred to as "the Participants") did not contest the contraventions, which related to the group structure of the nominee companies used for entrepot accounts.

The circumstances of this matter are as follows:

- (a) during the period 19 September 2001 to 5 August 2005 ("the Relevant Period"), a special purpose company was used as the nominee company of both Participants for settlement purposes ("the Nominee Company");
- (b) each of the Participants caused securities of which they were not the beneficial owners to be registered in the name of the Nominee Company; and
- (c) at no time during the Relevant Period was the Nominee Company a directly, legally and beneficially wholly owned subsidiary of either Participant.

In determining sanction the Tribunal took into account a number of matters, including the following:

- (a) the matters were not self reported and were brought to the Participants' attention by ASX Compliance Services;
- (b) the Participants indicated at an early stage that they would not contest the proceedings and co-operated fully with ASX in relation to the conduct of the investigations and proceedings and in rectifying the contraventions;
- (c) the Participants were previously found by the Tribunal to have contravened old ASX Business Rule 3.12(2) in November 2001. Due to an internal oversight, however, the Participants did not fully rectify the situation and continued to be in breach of that provision (and its successor) for a period of almost four years;
- (d) the contraventions that were the subject of these proceedings arose from the Participants' failure to transfer the entrepot HIN numbers from the Nominee Company (which was used by the Participants for entrepot purposes) into

nominee companies that were directly, legally and beneficially wholly owned subsidiaries;

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- (e) there was no evidence before the Tribunal to suggest that any clients or other parties were adversely affected by the contraventions; and
- (f) there was no evidence before the Tribunal to suggest that any commercial or other benefit was obtained by the Participants as a result of the contraventions.