

ASX Circular

Date: 5 September 2008

Key topics

1. Bell Potter Securities 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 ASX Disciplinary Tribunal ("the Tribunal") has determined the following:

- (i) Bell Potter Securities Limited ("**Bell Potter**") has been fined \$120,000 plus GST for the following contravention:

Bell Potter contravened ASX MR 13.4.1(b)(ii) by making Bids for, or dealing in the ordinary shares of, Genetic Technologies Limited ("**GTG**") on account of its Client where Bell Potter was aware that the person giving instructions for or on behalf of the Client intended to create a false or misleading appearance with respect to the market for, or the price of, GTG.

- (ii) Bell Potter has been fined \$25,000 plus GST for the contravention of ASX MR 4.10.1(a)(v) and 4.10.1(c) by failing to maintain sufficiently detailed records respectively showing:

- (i) the time the Market Participant received the instructions with respect to 13 records of instructions; and
(ii) the name of the person who gave the instructions with respect to 5 records of instructions.

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

- (a) The circumstances and facts of the matter;
- (b) The relevant Adviser, whose conduct Bell Potter was responsible for, knowingly facilitated the execution of the manipulative orders during the Relevant Period;
- (c) Bell Potter conducted an internal investigation into the matter, following an enquiry letter from both ASX and ASIC about Client trading in GTG. Bell Potter forwarded a breach report to ASIC and ASX on identifying a possible intention by the Client to manipulate the market. Bell Potter's investigation resulted in the suspension and subsequent termination of the relevant Adviser, the resignation of the Wollongong Branch Manager, closure of the Wollongong Office and Bell Potter reporting its findings to ASX and ASIC;
- (d) Bell Potter management and Compliance was not aware of the relevant Adviser's conduct at the time it occurred;
- (e) Bell Potter implemented the following initiatives to strengthen its compliance functions, including:
- (i) Implementing a Surveillance and Monitoring System; and
(ii) Provided additional training to its Advisers to prevent Market Manipulation.
- (f) Bell Potter co-operated with ASX in the resolution of the matter and elected not to contest the contraventions;
- (g) There was no evidence before the Tribunal to indicate that this type of conduct was or is systemic with Bell Potter; and
- (h) Tribunal precedents in similar matters.

The circumstances of the matter are detailed as follows:

- During the relevant period between 29 September 2006 and 2 November 2006, a representative of the Client instructed the relevant Bell Potter Adviser ("**Adviser**") with 6 emailed Buy orders that demonstrated a clear intention to create a false or misleading appearance with respect to the market for, or the price of, GTG.
- The representative of the Client also appeared to have motive for providing price support due to other interests held by the related parties.
- During the relevant period, the Adviser, on behalf of Bell Potter, entered 29 Bids for the Client following the receipt of six email instructions in addition to other communications between the order placer and the relevant Adviser. Instructions received by the Adviser were recorded on 11 Diary Notes and on the order records.
- Five (5) of the Diary Notes were directly supplemented by information contained in the client's email instructions. The Buy instructions contained in the Diary Notes indicated a continuing strategy of incremental bidding carried out by the Adviser.
- At all material times, the Adviser was an employee and representative of Bell Potter, and Bell Potter was therefore responsible for all actions and omissions of the Adviser.
- In the circumstances of this matter, the relevant Adviser knowingly facilitated the execution of the manipulative orders. The Adviser was privy to and carried out execution of the orders, whilst aware of the order placer's intention to provide price support. Furthermore, the Adviser failed Bell Potter in not preventing market manipulation by accepting and acting on those transactions.

Integrity of the Markets

The Tribunal recognises the gravity of the actions and omissions of the relevant Adviser, and the participants' responsibility for the conduct of its representatives.

The requirement to prevent manipulative trading is imperative to maintain a fair and orderly market. Deliberate attempts to interfere with the free and fair operation of the market to create artificial, false or misleading appearances with respect to the price of, or market for, a security is considered by the Tribunal to be a Very Serious Contravention of the ASX Market Rules. Manipulative trading directly affects the reputation of the ASX and the integrity of the markets it operates.

Further, the requirement under the ASX Market Rules that Participants ensure that transactions are recorded in the time and manner specified is an important measure, which facilitates the conduct of an orderly market. Order Record Systems are integral controls within the market, through which the ASX and Participants supervise Participant compliance with the requirements of the ASX. The failure to maintain sufficient order records has the potential to adversely affect the integrity of the markets that ASX operates.

In the circumstances of this matter, the available penalty range was up to \$250,000. For proceedings arising out of facts and circumstances occurring after 31 March 2008, the maximum penalty has been increased to \$1 million. The Tribunal regards the conduct of Bell Potter as a Very Serious Contravention of the Market Rules. Market Participants should expect that penalties will be commensurate with the seriousness of the contravention and will reflect the range that is available.