



**ASIC**

Australian Securities & Investments Commission

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989**  
**Undertaking to the Australian Securities and Investments Commission given for the purposes**  
**of section 93 AA**  
**by**  
**D J Carmichael Pty Limited**  
**ABN 26 003 058 857**

**1. BACKGROUND**

**Commentary**

- 1.1 D J Carmichael Pty Ltd ("D J Carmichael") is the holder of Security Dealers Licence number 11310, under the Corporations Law ("the Law").
- 1.2 In 1999 DJ Carmichael reported to the Australian Securities and Investments Commission ("ASIC") operational and trading irregularities by two former proper authority holders employed by DJ Carmichael.
- 1.3 ASIC commenced an investigation into the actions of the two former proper authority holders employed by DJ Carmichael.
- 1.4 Arising from that investigation, ASIC conducted a Surveillance commencing in December 1999 (the "Surveillance") of the operations of DJ Carmichael.
- 1.5 ASIC sought information and documents from D J Carmichael using its powers under the Law and the ASIC Act. The information and documents from D J Carmichael were reviewed by ASIC's internal compliance expert. D J Carmichael co-operated with ASIC during this Surveillance and bore some of the expenses incurred in the review.
- 1.6 During the Surveillance ASIC expressed concerns regarding the internal compliance procedures within D J Carmichael.
- 1.7 Issues arising out of the Surveillance in relation to compliance are not unique to D J Carmichael and have broader industry implications.
- 1.8 While D J Carmichael does not agree with all aspects of ASIC's concerns as set out below, it acknowledges them and has agreed to put in place a number of compliance measures (including the specific requirements set out below) for the purposes of ensuring best practice in ongoing compliance with the Law, the Corporations Regulations, the ASIC Act and Licence Conditions attached to licence number 11310.
- 1.9 D J Carmichael has informed ASIC that it had reviewed and initiated action to address the issues referred to in clause (1.8), following ASIC's Surveillance but prior to receiving ASIC's written notification of concerns.

## **Compliance**

- 1.10 Arising out its Surveillance, ASIC had concerns about D J Carmichael's compliance systems including supervision and training procedures in the areas of obtaining authorisation for transactions and advice given to clients.
- 1.11 D J Carmichael has offered and ASIC has accepted the commitments in this enforceable undertaking as an alternative to the actions referred to in clause 3.3.

## **2. UNDERTAKINGS**

D J Carmichael undertakes the following for the purposes of section 93AA of the ASIC Act.

- 2.1 D J Carmichael will, by 15 August 2000, engage an external independent compliance consultant (the "Compliance Consultant"), whose appointment and terms of reference are to be approved by ASIC, to review, assess, make recommendations and report ("the Initial Report") in writing by 15 October 2000 to D J Carmichael and ASIC on the change to D J Carmichael's compliance and training programs which D J Carmichael is implementing.
- 2.2 The compliance assessment will include, but not be limited to, the identification and recommendations for further changes with respect to compliance to ensure a level of full compliance with the requirements of the Law and the ASX Business Rules, and the Licence Conditions attached to licence number 11310, including but not limited to such issues as:
  - (a) supervision and training of representatives;
  - (b) record keeping;
  - (c) procedures to ensure that representatives have a reasonable basis for recommendations made; and
  - (d) procedures for opening new client accounts.
- 2.3 D J Carmichael will agree with ASIC a timetable to implement, any recommendations made by the Compliance Consultant in the Initial Report as soon as practicable but in any event by 31 January 2001 in order to achieve full compliance with the Law, and the ASX Business Rules and Licence Conditions attached to licence number 11310.
- 2.4 D J Carmichael will instruct the Compliance Consultant to review, assess, make further recommendations as warranted and report in writing to both D J Carmichael and ASIC on D J Carmichael's compliance and training programs as at 31 March 2001 (the "Interim Report") and 31 October 2001 (the "Final Report"). The Interim and Final Reports shall include an assessment of the matters referred to in clause 2.2 and in the terms of reference, and of the action taken by D J Carmichael to remedy any deficiencies identified in the Initial Report or in any of the Reports referred to in this clause. The Interim and Final Reports may make further recommendations for revisions to D J Carmichael's compliance and training programs, which D J Carmichael will implement based upon a timetable agreed with ASIC.