

6 April 2018

**By E-mail**

Senate Standing Committee on Economics  
Additional Committee Support Unit  
committee.sen@aph.gov.au

Dear Senate Committee Members

**Senate Inquiry into consumer protection in the banking, insurance and financial sector  
Response to adverse reflections**

Below is my response to the invitation extended by the Committee on 28 February 2018 to respond publicly to "adverse reflections" made about me during the public hearing held on 22 February 2018.

I have been provided with a transcript of the public hearing of 22 February 2018. The transcript contains a number of allegations about me made by Brendan James, Glenn Simpson and David Mendelawitz, which are untrue and damaging to me both professionally and personally. I wish to correct the public record regarding those allegations. A failure to respond to any allegation should not be interpreted in any way as an acceptance of the truth of the allegation. For the avoidance of doubt, I deny any illegal or improper conduct in my role generally as a stockbroker employed by the Macquarie Group (**Macquarie**) or specifically in my dealings with clients of Macquarie with shares in Cleveland Mining Group (**Cleveland**).

**Background**

I have been a stock broker for approximately 20 years. I have a Bachelor of Business Banking & Finance from Monash University and a Masters of Business Administration from the University of Hartford (USA).

I first started working at Macquarie in 1999. I left Macquarie in June 2013 of my own volition as I wanted to work for a smaller firm, to have my own broking team and to do more corporate activity.

I was appointed as a divisional director of Macquarie in around 2005 or 2006. Divisional director is the title given to senior and high-performing stock brokers (both in terms of revenue earned and contribution to the business). The role did not include the management of staff or involve any additional corporate responsibilities.

Whilst I was at Macquarie the vast majority of my clients were sophisticated or institutional investors, or high net wealth individuals. Some of my clients are investors, who invest and hold stock and some are what I describe as traders, which means that they regularly buy and sell stock.

My role as a stock broker is to advise clients in relation to investments in companies listed on the stock market and, as directed, broker trades (buying or selling investments) by those clients. Stock brokers act on their client's instructions and not independently. From time to time, stock brokers are given 'price time authority' by clients. This means that a stock broker has a standing authority from a client, typically given for a short period, to buy or sell stock within certain agreed parameters without verbal authority from the client if the client is not contactable. For example, a significant number of my clients were not readily contactable throughout the day (for instance, if they were in meetings). We would speak at the start of the day and agree that if a stock got to a

certain agreed price, I would place an order to buy or sell for them and not wait for an instruction if they were not contactable. That is called price time authority. This is different from discretionary trading where a broker is authorised to buy or sell any stock at any time at the broker's choice. I did not have authority for discretionary trading with any of my clients.

Stock brokers broker trades on market and do not, typically, deal directly with counter-parties. As a broker, if I place an order for stock, that order is filled without me (or my client) knowing who the counter-party is. On rare occasions, for trades of a certain value, a 'crossing' can be arranged so that the parties know who the counter party is. Indemenco 69 is a settlement nominee account for all trades brokered for clients by brokers employed by Macquarie. It is not a 'house account'.

My practice as a stock broker is to trade only for my clients and not on my own behalf. I do not hold a personal account (and did not at any time during my employment with Macquarie, or subsequently) to ensure that I remain focused while broking on the performance of my client's investment portfolios and not my own.

I only advised clients to buy stock that was appropriate for the risk profile of the particular client. For retail clients, for example, this means that high risk stocks such as Cleveland constituted no more than 10% of their investment portfolio.

#### ***Allegations made by Mr Mendelawitz***

During the public hearing held on 22 February 2018, Mr Mendelawitz made the following allegations:

- (a) when asked (based on previous media reports) which one of the advisors broke down after the capital raising in 2012 and told Mr Mendelawitz "that he'd done it, which was selling his friend's and family's stock to other shareholders";<sup>1</sup>

**Mr Mendelawitz:** *That was Michael Rosenbaum.*

- (b) when asked whether he had access to the shareholder list and whether he was able to see the changes to that list;<sup>2</sup>

**Mr Mendelawitz:** *Yes, but the majority of it was done with nominees, and I had no idea who the nominees were. I only had a pretty good understanding of one of them—that it was associated with the Rosenbaum family. That was the one where, when the selling began and he denied knowledge of anything, I said, 'This is you, isn't it?' and he said, 'Yes.'*

- (c) when asked in the context of Macquarie advisers having access to price sensitive information, whether the ASIC investigation is focusing on trading activity leading up to the weeks of the announcement of the MOU and whether there might have been insider trading going on;<sup>3</sup>

**Mr Mendelawitz:** *Yes. When I sent that email to ASIC, it was on the basis of looking at trades which gave me concerns that insider trading had occurred.*

**Senator Whish-Wilson:** *Again, be very clear for the record: you referred this to ASIC because of your concerns.*

<sup>1</sup> Transcript, page 7-8

<sup>2</sup> Transcript, page 8

<sup>3</sup> Transcript, page 9

**Mr Mendelawitz:** *Yes, I did. Can I add that it was so far past the date because that's when I was provided with the information.*

- (d) when asked whether he was aware of the extent of personal holdings or associated holdings for the advisers for family and friends:<sup>4</sup>

**Mr Mendelawitz:** *Yes, I was very much aware of it, because particularly after the case—after it all started falling down—some of the brokers started telling me their personal woes because of this—Stefan Whiting in particular. I don't see any evidence of Stefan Whiting making a lot of money out of this. I think that actually Stefan Whiting was dragged into this by others unwittingly in many ways, because the culture kind of drove that there. But he made it very clear that he and his family and friends had a lot of shares in it and that they were really suffering on the decline, and I think that he was completely unaware of Michael Rosenbaum trading from the Wadham and the other account that they had—AMRO's account. So, when we were trying to work out who was dumping stock, we had no idea. Michael was denying it, and then he admitted it was him. So, yes, I was aware of it all the way along, but it was only nominees that were selling, so I had no idea of the names. I didn't know who controlled nominees. To me, it wasn't of interest. I'm there to try to build a company, not trade shares.*

**Senator Whish-Wilson:** *Is part of the thing you've referred to ASIC whether there has been some kind of artificial price manipulation based on this?*

**Mr Mendelawitz:** *It just looks like it, having read all these emails, having been told everything and having a look at the timing of the trades. I went through 16,000 trades on Idameneo, and I was able to work out through addresses who those related to, and they were going back to a few people, basically in Brighton and thereabouts. There was a pattern there that you don't see on a daily basis. I wasn't there and I'm still not a CEO that cares about the market trades—that's for the market to deal with. My job is to run a company.*

These statements have represented, either expressly or by implication, that I traded preferentially for friends and family on account of having access to price sensitive information that was not publicly available. They further suggest I was involved in an attempt to artificially manipulate the share price of Cleveland stock. These allegations are false.

#### ***Response to allegations of Mr Mendelawitz***

I was first introduced to Cleveland in approximately 2009 or 2010. Mr Mendelawitz engaged Macquarie, through Stefan Whiting and Justin Hoy, to raise funding for offshore mining projects in December 2010. I met Mr Mendelawitz through Mr Hoy and Mr Whiting at around the time of the raising.

Mr Mendelawitz had been previously employed by Fortescue Mining. There was an iron ore boom in around 2011 and Cleveland was one of a number of small cap mining stocks with iron ore prospects. Cleveland's ASX announcements suggested that Cleveland had good prospects in both the gold and iron ore industries. Mr Mendelawitz and the Board of Cleveland were ex-Fortescue or had similar background. The mining interests that Cleveland announced, and the volumes that it was projecting had the prospect of making Cleveland a very successful company if those projects were developed to fruition. During 2012, I visited the Premier mine on my way back to Australia from a family vacation (at my own cost) as I wanted to understand the investment better for my clients. It is reasonably common for stockbrokers and investors to engage in site visits to better understand the investment opportunity on offer and I've engaged in

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<sup>4</sup> Transcript, page 13

such visits numerous times during the time I have been a stockbroker for that purpose. The mine site for the Premier gold project was located next to AngloGold's Ashanti mine, which is one of the biggest mines in Brazil, and Cleveland had announced that the samples that had been taken suggested that the ore ran across the boundary line into that mine site. Amongst other things, I wanted to confirm where the project site was located relative to the Ashanti mine and the information which Cleveland had made public. What I observed at the Premier mine site during that trip and what I was told was consistent with the information that had been made public by Cleveland and there was nothing that I learnt or became aware of that led me to question the correctness of Cleveland's public statements.

I did not act as a corporate advisor to Cleveland nor its directors, nor did I have access at any time to price sensitive information that was not publicly known. I gave investment advice based on information known to me from Cleveland's announcements to the ASX, my own investigations and my views about the company's prospects given my experience and the information which was publicly available. Throughout the period from 2011 to 2014, I continued to believe that Cleveland had reasonable prospects of delivering on the projects it had announced to the market.

For the avoidance of doubt, I have no knowledge, and never had any knowledge, of the terms or timing of the Memorandum of Understanding referred to in Mr Mendelawitz' statement beyond that which was announced to the market by Cleveland in its ASX announcements.

I reject Mr Mendelawitz's account of a conversation between him and me set out above and I reject the allegation that I was involved in hyping or otherwise artificially manipulating the stock.

Most of the clients who I advised and who bought Cleveland stock were considered sophisticated investors under the law and well aware of the 'high-risk, high-reward' nature of investing in small-cap mining stocks. Whilst at Macquarie I had a small number of retail clients who were family and friends or long-term associates.

I did not broker trades for clients of mine who were family and friends (or for any other client) other than as I describe above.

My family and friends sold stock depending on their personal circumstances. Some traded and others held, but it was at all times up to the individual. My family and friends who traded in Cleveland did so because they believed, as I did, that Mr Mendelawitz would deliver on the statements made in ASX announcements. Three of my close personal friends lost in excess of \$100,000 in Cleveland. One of those friends continues to hold shares in Cleveland.

The suggestion by Mr Mendelawitz that I was controlling or related to a large number of nominee accounts is untrue. I have not traded in a personal capacity for over 15 years, and never bought shares in Cleveland for myself.

There were two entities related to my family that traded in Cleveland and my father was the sole director of both. My father traded regularly in a number of stocks from National Australia Bank to Cleveland Mining and most of these trades were short term as I would classify my father as a trader not an investor. My father did not buy and hold stock. The trades in Cleveland made up only a small percentage of his trades in the calendar year. One entity, A.M.H Nominees, traded in Cleveland less than five times during the relevant period. The other entity, Amerose Pty Ltd, traded in Cleveland thirty times during this period, which represented less than 2% of the trades Amerose Pty Ltd made during that period. I traded on my father's instructions, although I had price time authority for Amerose which meant that I could make the decision to buy or sell stock within agreed parameters. My father and I would discuss those parameters on almost a daily basis, and I would buy and sell stock within the limits of that authority. As I state above, I did not have access to price sensitive information about Cleveland that was not publicly known and I did not broker trades for my father's companies on any other basis.

The nominee company to which Mr Mendelawitz refers in his evidence, Wadham Nominees, has no connection to me or my family. It has two directors and is run by a wealthy family for whom I was a broker. They are and were sophisticated investors, and had assets in excess of \$50m. Cleveland was one of their many trading positions. During this period, Wadham Nominees required funds for another business venture and instructed me to sell a variety of stock in its investment portfolio, including Cleveland. I did not advise it as to which stocks to sell. I acted on its instructions. Mr Mendelawitz asked me about it at the time and I told him these same facts.

### ***Allegations made by Brendan James***

During the public hearing held on 22 February 2018, Mr James made the following allegations:

- (a) In his opening statement:<sup>5</sup>

**Mr James:** [...] *When the share price started dropping in mid-2012 it was because it had leaked out to at least one Macquarie adviser, a divisional director, that the Ferradura iron ore project in Brazil was a fraud and was likely to produce no iron ore.*

**Senator Whish-Wilson:** *Can you tell us which director that was, Mr James?*

**Mr James:** *I'd originally decided not to, but because Mr Mendelawitz has now let the cat out of the bag, it was Mr Rosenbaum. I wish someone at Macquarie management or compliance had stepped in to sideline these advisers, based on having inside information and being hopelessly conflicted.*

*When the share prices were dropping in 2012, this was not because the Cleveland share price was undervalued, as my Macquarie advisers had been telling me; it was because it had been leaked to the Macquarie advisers that Cleveland was in trouble and the advisers started exiting their clients.*

- (b) When recounting a phone call between Mr James and I in August 2017, Mr James said I made the following comments:<sup>6</sup>

*"Yeah. Yeah, I know. I've done wrong. I've done the wrong thing. Yeah, I know ASIC are going to come after me"*

*"I've been doing it all my life. I've been trading on my father's account illegally. I've been running stocks"*

*"I found out about Cleveland...I found out that Cleveland was a worthless piece of shit...and I got all my family and friends out of the stock"*

*"I just found out. I knew it was no good, so I got everybody out"*

Mr James made various other accusations about Macquarie advisers refusing to sell Cleveland shares on his behalf when requested and purchasing stock in Cleveland on his behalf without authority. At no point during my time at Macquarie was I Mr James' broker. I have never given Mr James any advice nor have I ever bought or sold shares for him or on his behalf.

### ***Response to Mr James' allegations***

As I noted above, I was not Mr James's stock broker and did not advise or provide broking services to him.

<sup>5</sup> Transcript, page 15.

<sup>6</sup> Transcript, page 15.

I deny Mr James' account of our conversation in August 2017. We did speak in or around August by phone but much of what Mr James alleges was said in those telephone calls is inaccurate and/or untrue. At no point during that conversation did I make any of the admissions that Mr James alleges nor did I engage in the conduct the subject of Mr James' accusation. Mr James's account of the conversation materially misstates the content of the conversation and is inaccurate in many respects.

I have not traded on my father's accounts illegally nor have I engaged in price manipulation of stocks. As stated above I only traded my father's account upon his instructions or authority and gave investment advice based on information known to me from company's announcements to the ASX, my own investigations and my views about particular company's prospects given my experience and information which was publicly available.

At no point did I have price sensitive information about Cleveland that was not publicly available, and at no point did I trade preferentially in Cleveland for family and friends. As a stockbroker I act on the instructions of my clients. As I note above, that included selling stock when my clients wanted to do so. As an experienced broker, my practice is not to seek to dissuade my clients when they wish to sell a particular stock to avoid any future disputes about the performance of that stock if I was to persuade them to continue to hold the stock. As I note above, a number of my clients instructed me to sell their Cleveland stock during the period from 2011 to 2012 and I did so on their instructions.

The allegation that I had information that Cleveland was worthless in or around 2012 and sold the share-holdings of my family and friends on account of that information is untrue. The allegation that the share price for Cleveland dropped in 2012 because I knew, and leaked information that, the Ferradura iron ore project in Brazil was likely to produce no iron ore in mid-2012 (and on account of that information begun exiting clients), is also false. As I state above, throughout the period from 2011 to 2014, I continued to believe that Cleveland had reasonable prospects of delivering on the projects it had announced to the market and I advised my clients accordingly.

I only learnt that the Ferradura project was not viable and Cleveland was not what Mr Mendelawitz had represented to the market after I left Macquarie in or around 2014. I ceased my relationship with Cleveland at around this time after learning Mr Mendelawitz used funding from a US based hedge fund which I thought was disreputable and I felt I could no longer believe his story nor the prospects of the company.

Yours sincerely