

[Number]

**ENFORCEABLE UNDERTAKING
AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Section 93AA Australian Securities & Investments Commission Act 1989**

The commitments in this undertaking are offered to the Australian Securities and Investments Commission ("ASIC") by:

**Wheaton Group Pty Ltd
ACN 075 680 009
450 Pultney Street
ADELAIDE SA 5000**

and

**Cory David Wheaton Williams
15 Church Terrace
WALKERVILLE SA 5081**

and

**Dean Rudiger Guse
520 Seaview Road
GRANGE SA 5022**

1. Background

- 1.1 Wheaton Group Pty Ltd ACN 075 680 009 ("Wheaton") was incorporated on 18 September 1996.
- 1.2 Between 18 November 1997 and 15 February 2000 Wheaton was the holder of an unrestricted dealer's licence no 169252 issued under the Corporations Law. On 15 February 2000 the licence was amended and altered to a restricted dealers's licence.
- 1.3 Cory David Wheaton Williams ("Williams") is the sole director of Wheaton and holds a proper authority issued by it on 19 January 1998.

- 1.4 Dean Rudiger Guse ("Guse") holds a proper authority issued by Wheaton on 19 January 1998.
- 1.5 Wheaton's business includes the provision of advice to clients in relation to negatively geared investments. Many of Wheaton's clients operate margin lending accounts.
- 1.6 As an authorised representative of Wheaton, Guse has made securities recommendations to Wheaton's clients in relation to their negatively geared investments.
- 1.7 During the latter half of 1999, Guse advised some of Wheaton's clients to sell investments and close their margin lending accounts with one particular facility. Approximately two months later, Guse advised the same clients to open new margin lending accounts with the same facility and to acquire substantially the same or similar negatively geared investments as they had previously held.
- 1.8 As a result of clients accepting recommendations made by Guse or similar recommendations made by other authorised representatives of Wheaton, commissions in the amount of \$218,353.77 became payable to Wheaton.
- 1.9 Following its investigation, ASIC has reason to believe:
 - 1.9.1 that neither Guse nor the other authorised representatives of Wheaton had a reasonable basis, as required by section 851 of the Corporations Law, for advising clients to sell their negatively geared investments or for advising clients to repurchase similar negatively geared investments;
 - 1.9.2 that Guse and the other authorised representatives of Wheaton had failed to keep adequate records to establish the basis upon which the recommendations to these clients were made; and
 - 1.9.3 that Williams, as the sole director of Wheaton, failed to take reasonable steps to ensure authorised representatives of Wheaton gave proper consideration to the requirements of section 851 of the Corporations Law and failed to take reasonable steps to ensure that adequate records were kept by representatives to establish the basis upon which recommendations were made to clients.
- 1.10 Wheaton, Williams and Guse acknowledged ASIC's concerns and in particular, acknowledge that the information recorded on client files is incapable of providing evidence that authorised representatives of Wheaton including Guse had a reasonable basis for making the recommendations to clients.

2. Undertakings

2.1. Pursuant to s93AA of the Australian Securities and Investments Commission Act Wheaton hereby undertakes:

2.1.1 that it will, by 31 March 2000, conduct a review of its training, supervision and compliance procedures and will implement such changes to those procedures as are necessary to ensure compliance with condition no. 1 of its amended licence issued 15 February 2000;

2.1.2 that it will, by 31 March 2000, nominate an independent and suitably qualified party approved by ASIC to conduct a review of its training, supervision and compliance procedures;

2.1.3 that it will cause the party nominated as a consequence of the undertaking in paragraph 2.1.2 to undertake a review of its training, supervision and compliance procedures and to report to ASIC as to the adequacy and appropriateness of those procedures by 14 April 2000;

2.1.4 that it will adopt any recommendations made as a consequence of the review referred to in paragraph 2.1.3 which ASIC directs it to adopt within 2 weeks of such direction being made;

2.1.5 that it will forthwith ensure that its authorised representatives keep proper documentation on client files and elsewhere as appropriate, to record the basis upon which securities recommendations are made to clients, which documentation is to include records of:

(a) the information the representatives have as to the particular client's personal investment objectives, financial situation and particular needs; and

(b) what consideration and investigation has been made of the subject matter of the recommendation to ensure it is appropriate to the client's investment objectives, financial situation and particular needs

to comply with the requirements of section 851 of the Corporations Law.

2.1.6 that it will cause the same party to conduct a further review of its training, supervision and compliance procedures six months after the first review and to report to ASIC on:

2.1.6.1 the adequacy and appropriateness of the procedures including whether the recommendations in the first report have been adopted; and

2.1.6.2 whether it appears that Wheaton's authorised representatives have complied with section 851 of the Corporations Law in

relation to securities recommendations made to clients during the six month period;

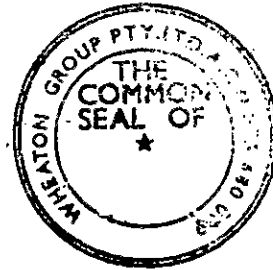
- 2.1.7 that it will forgo the payment of the \$218,353.77 commission referred to in paragraph 1.8 and will not exercise any right or claim which it might have had, if it had not entered into this undertaking, to those funds or any part of them;
 - 2.1.8 that it will, immediately following the execution of this undertaking, write to all clients referred to in paragraph 1.8, in terms approved by ASIC, advising those clients that their commissions will not be deducted from their margin lending accounts; and
 - 2.1.9 that it will not accept a higher percentage trailing commission in respect of negatively geared investments taken up by clients as described in paragraph 1.8 than was paid in relation to the original negatively geared investments held by those clients.
- 2.2 Pursuant to s 93AA of the Australian Securities and Investments Commission Act Williams and Guse each hereby undertake:
- 2.2.1 to take all steps necessary for Wheaton to effect the matters set out in paragraph 2.1 herein;
 - 2.2.2 that each of them will not exercise any right or claim which either of them in their personal capacity may have to any part of the \$218,353.77 commission referred to herein;
 - 2.2.3 that each of them will forthwith ensure that they keep proper documentation on client files and elsewhere as appropriate, to record the basis upon which securities recommendations are made to clients, which documentation is to include records of:
 - (a) the information they have as to the particular client's personal investment objectives, financial situation and particular needs; and
 - (b) what consideration and investigation has been made of the subject matter of the recommendation to ensure it is appropriate to the client's investment objectives, financial situation and particular needs
- to comply with the requirements of section 851 of the Corporations Law.

3. Acknowledgments

- 3.1 Wheaton, Williams and Guse each acknowledge that ASIC:
 - 3.1.1 may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;

- 3.1.2 may from time to time publicly refer to this undertaking; and
- 3.1.3 will make this undertaking available for public inspection.
- 3.2 Wheaton, Williams and Guse each acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- 3.3 Wheaton, Williams and Guse each acknowledge that this undertaking has no operative force until accepted by ASIC.

The Common Seal of Wheaton Group)
 Pty Ltd ACN 075 680 009 was affixed)
 to this undertaking in the presence of:)



[Handwritten Signature]
 Director

 Director/ Secretary

CORY WILLIAMS
 Name (Print)

 Name (Print)

This 24 day of February 2000

Signed by Cory David Wheaton)
 Williams in the presence of:)

[Handwritten Signature]
 Signature


TADEUSZ BISKUP
 Witness' signature

[Handwritten Signature]
 Name of witness (printed)


100 PRIDE ST Adelaide
SA 5007
 Address

This 24th day of February 2000

Signed by Dean Rudiger Guse)
in the presence of:)



Signature



Witness' signature

TAMARUSZ BISKUP

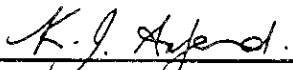
Name of witness (printed)

100 PIRIE ST Adelaide
SA 5007

Address

This 24 day of February 2000

**ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
PURSUANT TO ASIC ACT S93AA BY ITS DULY AUTHORISED DELEGATE:**



Karen Axford
Regional Commissioner
SA Regional Office

This 24th day of February 2000.