

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

SECTION 93AA

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

Rene Rivkin
365 New South Head Road
Double Bay NSW 2028
("Rene Rivkin")

and

Tarfaya Nominee Pty Limited (ACN 001 350 634)
Level 3
1-9 Chandos Street
St Leonards NSW 2065
("Tarfaya")

and

Rivkin Discount Stockbroking Pty Limited (ACN 091 247 620)
Level 7
30 Clarence Street
Sydney NSW 2000
("RDS")

(collectively "the Parties").

1. DEFINITION

Benefit has the meaning given by the Corporations Law.

Controls has the meaning given by section 50AA of the Corporations Law.

Deal(s) in Securities means to acquire, dispose of or subscribe for Securities, or make or offer to make an agreement for or with respect to acquiring, disposing of, or subscribing for Securities otherwise than by way of providing security in respect of a loan or debt.

Oral Recommendation means any recommendation about Securities made by Rene Rivkin to members of the public including subscribers of The Rivkin Report including but not limited to recommendations made in a broadcast or at an investments seminar conducted by Rene Rivkin and/or Tarfaya.

person has the meaning given by the Corporations Law.

Publication means The Rivkin Report and any other document, newsletter or report (in writing, in electronic form, on a website or otherwise) which:

- (a) contains recommendation and/or advice about Securities endorsed and/or written solely or jointly by Rene Rivkin; and
- (b) is published or issued by a Related Party or by Rene Rivkin.

Related Parties (Party) means any person ("the first-mentioned person") which satisfies any one of the following conditions:

- (a) Rene Rivkin Controls the first-mentioned person;
- (b) Rene Rivkin is a director of the first-mentioned person;
- (c) Rene Rivkin is a majority shareholder of the first-mentioned person; and
- (d) Rene Rivkin is a director of a person that is a majority shareholder of the first-mentioned person.

Securities means shares in an entity and/or options in respect of shares in any entity.

The Rivkin Report means any document, report or newsletter entitled "The Rivkin Report" or "Rene Rivkin Report" which is published by Tarfaya and which contains recommendations and/or advice about Securities endorsed and/or written solely or jointly by Rene Rivkin.

2. BACKGROUND

- 2.1 Tarfaya is the holder of investment advisers licence number 168114 under the Corporations Law ("the Law"). Tarfaya is in the business of providing investment advice and has published The Rivkin Report since April 1997.
- 2.2 The Rivkin Report can only be accessed by persons who pay an annual fee by way of subscription ("the Subscribers") and the subscription for the Report was, and continues to be, promoted through advertisements in the print and electronic media. During the period from 14 April 1998 to 21 June 1999 ("the Relevant Period") there were between 1,900 and 5,800 Subscribers to The Rivkin Report.
- 2.3 Rene Rivkin, who is a director and shareholder of Tarfaya, held a proper authority as a representative of Tarfaya and was the author or a co-author of The Rivkin Report during the Relevant Period.

- 2.4 ASIC has conducted an investigation in relation to suspected contraventions of section 995(2) of the Law by Tarfaya and Rene Rivkin ("the Investigation").
- 2.5 In the Relevant Period, Rene Rivkin made recommendations in relation to Holyman Limited, FAI Insurances Limited, Murrin Murrin Investments Pty Limited, Infratil Australia Limited and Abednego Nickel Limited ("the Recommended Securities").
- 2.6 During the Relevant Period Rene Rivkin, from time to time, variously recommended in The Rivkin Report that Subscribers:
- (i) purchase the Recommended Securities up to a specified price; or
 - (ii) refrain from selling the Recommended Securities.
- 2.7 During the Relevant Period, and at or about the time that Rene Rivkin was making "buy" or "hold" recommendations in relation to the Recommended Securities in The Rivkin Report referred to in 2.6, he placed orders to sell and/or sold some of the Recommended Securities, either as principal or as agent, at or around the price recommended in relation to the Recommended Securities.
- 2.8 The matters referred to in 2.6 and 2.7 were not disclosed in The Rivkin Report.
- 2.9 By reason of the matters referred to in 2.6 to 2.8 above, ASIC became concerned that Rene Rivkin's conduct in dealing with the Recommended Securities in a manner that was inconsistent with his recommendations without fully disclosing his dealings had the potential to mislead or deceive Subscribers.
- 2.10 As a result of the Investigation and the matters referred to in 2.6 to 2.9 above, ASIC became concerned that:
- (a) Tarfaya had breached section 995(2) of the Law;
 - (b) Rene Rivkin had breached section 995(2) of the Law in that he made recommendations in The Rivkin Report during the Relevant Period which were misleading or deceptive or were likely to mislead or deceive together with the trading in securities, the subject of those recommendations, by Tarfaya and Rene Rivkin as principal or agent for other persons;
 - (c) Tarfaya had not performed and may not perform efficiently, honestly and fairly the duties of a holder of an investment adviser's licence;

- (d) Rene Rivkin had not performed efficiently, honestly and fairly the duties of a representative of Tarfaya; and
 - (e) Rene Rivkin may not perform efficiently, honestly and fairly the duties of a dealer and of a representative of an investment adviser.
- 2.11 ASIC has the power to, subject to section 837 of the Law, make a banning order against a natural person (a representative) either permanently or for a specified period pursuant to sections 829 and 830 of the Law, or impose conditions on that person pursuant to section 831 of the Law.
- 2.12 ASIC has the power to, subject to section 837 of the Law, make a banning order against a holder of a licence either permanently or for a specified period pursuant to section 826 of the Law, or impose conditions on the licence pursuant to section 786 of the Law.
- 2.13 Although Rene Rivkin and Tarfaya do not agree with ASIC's concerns set out in 2.6 to 2.10 above, Rene Rivkin and Tarfaya acknowledge those concerns of ASIC.
- 2.14 Rene Rivkin is one of the directors of RDS which has applied for a dealer's licence from ASIC. ASIC has the power pursuant to section 786 of the Law, subject to section 837 of the Law, to impose conditions, in certain circumstances, on a dealer's licence. In accepting this enforceable undertaking from the Parties, ASIC has had regard to RDS' agreement to accept a dealer's licence from ASIC which includes a condition that allows RDS to provide only a non-advisory and execution brokerage service.
- 2.15 ASIC has not alleged that either Rene Rivkin or Tarfaya acted with intent to mislead subscribers or to behave dishonestly.
- 2.16 ASIC has agreed to accept the commitments from the Parties in this undertaking to allay its concerns relating to the conduct of Rene Rivkin and Tarfaya arising out of information known to ASIC at the time of accepting this undertaking.

3. UNDERTAKINGS

Pursuant to section 93AA of the Australian Securities and Investments Commission Act ASIC accepts the following commitments which are effective for a period of two years from the date of this undertaking.

Disclosure and Restraints on Trading

- 3.1 For a period of 24 hours prior to the date on which an Oral Recommendation is made and/or a recommendation about Securities appears in The Rivkin Report and/or any Publication, Rene Rivkin, any Related Party, Tarfaya or

any one or more of them will not Deal in Securities, the subject of that recommendation, either as principal or agent.

- 3.2 During the date, and for one business day following the date, on which an Oral Recommendation is made and/or a recommendation about Securities appears in The Rivkin Report and/or any Publication Rene Rivkin, any Related Party, Tarfaya or any one or more of them, will not Deal in Securities, the subject of that recommendation, either as principal or agent.
- 3.3 For a further period of 5 business days commencing from the expiry of the 2 day period referred to in 3.2 above, Rene Rivkin, any Related Party, Tarfaya or any one or more of them will not Deal in Securities, which are the subject of any recommendation made in a manner referred to in 3.1 or 3.2 above, either as principal or agent, in a manner that is contrary to that recommendation.
- 3.4 A dealing which is contrary to a recommendation referred to in 3.3 includes any of the following:
- (a) where the recommendation or advice in relation to a Security is "hold", selling that Security;
 - (b) where the recommendation or advice in relation to a Security is "buy", selling that Security at the recommended price, below the recommended price or at any price up to 5% (inclusive) greater than the recommended price; or
 - (c) where the recommendation or advice in relation to a Security is "sell", buying that Security at the recommended price or at any price within a range between 5% less than and 5% greater than (inclusive) the recommended price.
- 3.5 Where, as principal or agent, Rene Rivkin, any Related Party, Tarfaya or any one or more of them, Deal in Securities, the subject of any recommendation made in a manner referred to in 3.1 or 3.2:
- (i) outside the periods referred to in 3.1 to 3.3 above; and/or
 - (ii) in a manner that is not in breach of 3.3 and/or 3.4 above,
- Rivkin and/or Tarfaya will:
- (a) in the case of an Oral Recommendation, disclose details of such dealing in the same communications medium in which the Oral Recommendation was made except where such recommendation was made during a subscriber forum or where such recommendation was made by Rene Rivkin in any radio or television broadcast or program on which he is not a regular participant; and/or

(b) publish or cause to be published details of such dealing in the upcoming edition of The Rivkin Report and/or Publication,

as soon as practicable after the dealing.

Compliance

- 3.6 Rene Rivkin and Tarfaya will appoint an external independent expert (at their cost) acceptable to ASIC to carry out the following tasks at the end of each month ("the Reporting Month") and report in writing to Rene Rivkin, Tarfaya and ASIC by no later than the 15th day of the following month on whether Rene Rivkin and Tarfaya have satisfied their obligations set out in 3.1 to 3.5 above in respect of that Reporting Month:
- (a) review;
 - (b) assess; and
 - (c) make recommendations where necessary.
- 3.7 Rene Rivkin and Tarfaya will use their best endeavours to assist the expert for the purpose of the monthly review undertaken by the expert.
- 3.8 Where an expert report identifies a breach of any obligation set out in 3.1 to 3.5 above, that aspect of the report must be:
- (a) published in the upcoming edition of The Rivkin Report and/or the Publication;
 - (b) published on the website(s) of Rene Rivkin and Tarfaya; and
 - (c) lodged with the Australian Stock Exchange Limited,
- as soon as practicable after the notification of the breach by the expert.
- 3.9 Tarfaya has obtained legal advice in relation to its compliance plan and will provide to ASIC within 30 days from the date of this undertaking the compliance plan for ASIC's consideration and approval. The compliance plan will include, but not be limited to, recommendations to ensure a level of full compliance with the requirements of the Law, the Corporations Regulations, the ASIC Act, and licence conditions attached to Tarfaya's investment advisers licence number 168114, including such issues as:
- (a) supervision and training of representatives;
 - (b) disclosure to Subscribers; and
 - (c) complaints handling procedures,
- ("the Compliance Plan").

- 3.10 Tarfaya will implement any recommendations made in the Compliance Plan and/or by ASIC as soon as practicable, but in any event by no later than 15 December 2000.

General

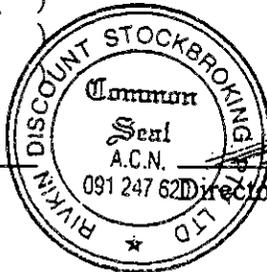
- 3.11 RDS will not, without the consent of ASIC:
- (a) operate as an advisory broker or dealer; and
 - (b) for a period of two years from the date of this undertaking, apply to ASIC for the removal or variation of the condition which prohibits RDS from providing investment advice and/or publishing a securities report.
- 3.12 At any time during the period of two years commencing from the date of this undertaking, where a person, other than Tarfaya is or becomes a Related Party, Rene Rivkin will procure that the Related Party comply with the obligations set out in 3.1 to 3.5 until the expiry of that two year period.
- 3.13 Rene Rivkin and Tarfaya will publish in the upcoming edition of The Rivkin Report and as soon as practicable, on their website(s), the contents of this enforceable undertaking.
- 3.14 Rene Rivkin and Tarfaya have agreed to bear some of the cost of the Investigation.
- 3.15 Rene Rivkin and/or Tarfaya will not, or will not attempt to, do any act or make any statement which denies or is inconsistent with the spirit, intent or contents of this undertaking including denying, refuting or misrepresenting any acknowledgment in, or any content of, this undertaking.
- 3.16 Where Rene Rivkin and/or Tarfaya contravenes the obligation in 3.15, ASIC will be entitled to take action under 2.11 and 2.12 above and/or require that Rene Rivkin and/or Tarfaya correct or rectify the contravention or conduct.
- 3.17 Where ASIC, on a reasonable basis, has concerns about the Parties' compliance with this undertaking, at its written request, the Parties will provide ASIC officers with access to books so as to enable ASIC to determine whether or not the Parties have complied with this undertaking.

4. ACKNOWLEDGMENTS

- 4.1 The Parties acknowledge that ASIC:
- (a) will issue a media release; and
 - (b) will make this undertaking available for public inspection.

- 4.2 The Parties acknowledge that this undertaking has no operative force until accepted by ASIC.
- 4.3 The Parties acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this undertaking.
- 4.4 The Parties acknowledge that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate and take appropriate action in the following circumstances:
- (a) in relation to future conduct of the Parties; and/or
 - (b) where ASIC becomes aware of any evidence or information (not known to it at the time of accepting this undertaking) in relation to any conduct by any one or more of the Parties which gives rise to new concerns. In such a case, ASIC may take into account and/or rely on any aspect of the conduct described in this undertaking when taking any action and/or exercising any remedies available to it.

The Common Seal of Rivkin Discount
 Stockbroking Pty Limited was
 duly affixed to this undertaking on 4
08 September 2000 in the presence of, and
 the sealing is attested by:



 Director (signature)

 Director/Secretary (signature)

RENE RIVKIN
 Name

NORRIS SMITH
 Name

Signed by Rene Rivkin on 4
08 September 2000 in the presence of: _____)

 Signature

JOHN DEERFIELD
 Name (printed)

The Common Seal of Tarfaya Nominee Pty Limited was duly affixed to this undertaking on 4 ^{Oct} September 2000 in the presence of, and the sealing is attested by:



[Signature]
Director (signature)

[Signature]
Director/Secretary (signature)

Rene Riskin
Name

N. Littlewood
Name

Accepted by the Australian Securities and Investments Commission pursuant to section 93AA of the Australian Securities and Investments Commission Act by its duly authorised delegate:

[Signature]
Jan Redfern
General Counsel, NSW Regional Office

Date: 4 October 2000