

Australian Securities and Investments Commission

**ENFORCEABLE UNDERTAKING
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT
SECTION 93AA**

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

Nomura International Plc
1 St Martin's-le-Grand
LONDON UNITED KINGDOM
("Nomura")

1. BACKGROUND

- 1.1 On 25 February 1997, ASIC (then known as the Australian Securities Commission) commenced proceedings against Nomura in the Federal Court of Australia (numbered NG 3045 of 1997) ("the Proceedings"). In the Proceedings, ASIC alleged contraventions of sections 995, 998 and 1260 of the Corporations Law and section 52 of the Trade Practices Act 1974 (Cth) by reason of Nomura's dealings in securities on the Australian Stock Exchange Limited and in futures contracts on the Sydney Futures Exchange Limited on 29 March 1996 in connection with the closing out on that date of its arbitrage position
- 1.2 The Proceedings were heard by Mr Justice Sackville in the Federal Court of Australia during the period 3-25 August 1998.
- 1.3 On 10 December 1998, Mr Justice Sackville delivered his Reasons for Judgement in the Proceedings. A true copy of those Reasons for Judgement is annexed and marked "A".
- 1.4 In the Reasons for Judgement, Mr Justice Sackville made findings that Nomura had contravened sections 995, 998 and 1260 of the Corporations Law and section 52 of the Trade Practices Act.

2. UNDERTAKINGS

- 2.1 Without limiting any obligation of Nomura under the Corporations Law, Nomura will not, by itself its servants or agents, knowingly in the conduct of its Australian index arbitrage activities, enter into or carry out directly or indirectly, any transaction of sale or purchase of any securities on the ASX which does not involve any change in the beneficial ownership of the securities, in the manner described on pages 62 and 63 of the Reasons for Judgement or in any similar manner, in connection with the expiry of futures contracts held by Nomura on the SFE.
- 2.2 Without limiting any obligation of Nomura under the Corporations Law, Nomura will not, by itself its servants or agents, knowingly in the conduct of its Australian index arbitrage activities, place or give orders for the placing of buy and sell orders on the ASX which are intended or likely to create a false or misleading appearance of active trading on the ASX in any securities held by Nomura, in the manner described on pages 8-9 and 135 - 139 of the Reasons for Judgement or in any similar manner, in connection with the expiry of futures contracts held by Nomura on the SFE.
- 2.3 Without limiting any obligation of Nomura under the Corporations Law, Nomura will not, by itself its servants or agents, knowingly in the conduct of its Australian index arbitrage activities, place or give orders for the placing of buy and sell orders on the ASX which are intended or likely to create a false or misleading appearance with respect to the price of any securities held by Nomura, in the manner described on pages 8-9, 12, 13, 135 - 139 and 149 - 153 of the Reasons for Judgement or in any similar manner, in connection with the expiry of futures contracts held by Nomura on the SFE.
- 2.4 Without limiting any obligation of Nomura under the Corporations Law, Nomura will not, by itself its servants or agents, knowingly in the conduct of its Australian index arbitrage activities, place or give orders for the placing of buy and sell orders on the ASX which are calculated to create a false or misleading appearance with respect to the price for dealings in futures contracts on the SFE, in the manner described on pages 8-9, 11-13, and 142 - 145 of the Reasons for Judgement or in any similar manner, in connection with the expiry of futures contracts held by Nomura on the SFE.

2.5 Without limiting any obligation of Nomura under the Corporations Law, Nomura will not, by itself its servants or agents, knowingly in the conduct of its Australian index arbitrage activities, place or give orders for the placing of buy and sell orders on the ASX which are misleading or deceptive or likely to mislead or deceive in the manner described on pages 8-9, 11, and 145 - 149 of the Reasons for Judgement or in any similar manner, in connection with the expiry of futures contracts held by Nomura on the SFE.

2.6 Up to and including 9 December, 2001 Nomura will:-

- a) keep for three months all tapes of telephone conversations which are conducted on each Expiry Day and for the five days preceding:-
 - (i) between officers (including employees) of Nomura engaged in trading conduct relating to Nomura's Australian index arbitrage activities;
 - (ii) between officers (including employees) of Nomura engaged in trading conduct relating to Nomura's Australian index arbitrage activities and any Australian broker;
 - (iii) between officers (including employees) of Nomura engaged in trading conduct relating to Nomura's Australian index arbitrage activities and any of Nomura's agents;

relating to securities traded on the ASX and/or futures traded on the SFE, in connection with the expiry of futures contracts held by Nomura on the SFE;

- b) Subject to paragraph d) below, if ASIC has reason to suspect any contravention of the Corporations Law, the ASX Business Rules or the SFE By-laws by Nomura in connection with the expiry of futures contracts held by Nomura on the SFE, on ASIC's written request: (i) retain all tapes of telephone conversations referred to in paragraph 2.6(a) and relating to that expiry until further notice; and (ii) as soon as practicable transcribe all such tape records and provide all such records and transcriptions thereof to ASIC; and
- c) answer all reasonable enquires of ASIC or the ASX or SFE on any Expiry Day or any of the five days preceding an Expiry Day relating to its actions or proposed actions in respect of the sale by Nomura of securities on the ASX in connection with the expiry of futures contracts held by Nomura on the SFE.

- d) if any such tape records and transcriptions contain any confidential information of a client of Nomura, Nomura must use its reasonable endeavours to obtain its client's consent to the production of that information to ASIC but need not produce that confidential information if that client's consent is withheld, unless otherwise required by any applicable law.

3 ACKNOWLEDGEMENTS

- 3.1 Nomura acknowledges that ASIC will make this Undertaking available for public inspection.
- 3.2 Nomura acknowledges that this Undertaking has no operative force until accepted by ASIC.

Definitions

In these Orders, the following terms are defined:-

"ASX" means the Australian Stock Exchange Limited.

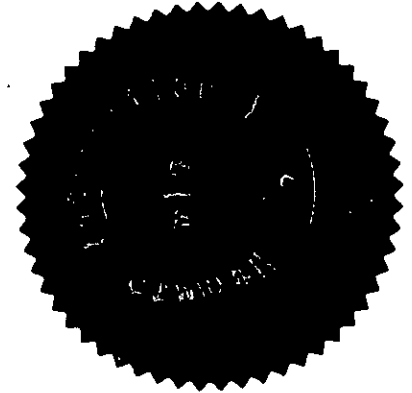
"Expiry Day" means the last day in each of the months of March, June, September and December in which the SPI Futures may be traded on the SFE.

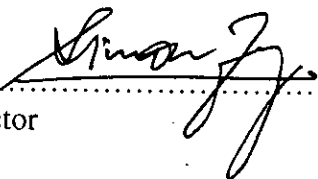
"Reasons for Judgement" means the reasons for judgement delivered on 10 December 1998 by his Honour Sackville J in proceedings number NG 3045 of 1997 in the Federal Court which were conducted by the ASIC against Nomura.

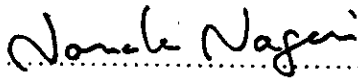
"SFE" means the Sydney Futures Exchange Limited.

"SPI Futures" means the Share Price Index futures contract which is traded on the SFE.

The Common Seal of)
Nomura International Plc)
was hereunto affixed)
in the presence of)

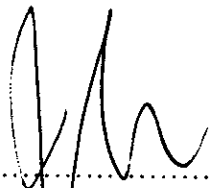



.....
Director


.....
Secretary

This 16th day of February 1999

**ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION PURSUANT TO SECTION 93AA OF THE AUSTRALIAN
SECURITIES AND INVESTMENTS COMMISSIONS ACT BY ITS DULY
AUTHORISED DELEGATE:**


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Joseph P Longo
National Director, Enforcement