

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION SECTION s93AA ASIC ACT

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

Anthony Raymond Cunningham
99 Howes Crescent
DIANELLA WA 6062

1. BACKGROUND

- 1.1 Since 21 November 1995 Mr Cunningham has been an authorised representative with D J Carmichael Pty Limited ACN 003 058 857 ("DJ Carmichael").
- 1.2 On 1 January 1997 Mr Cunningham signed a contract of employment with DJ Carmichael pursuant to which he agreed to comply with the Corporations Law, Australian Stock Exchange Limited's Business Rules and DJ Carmichael's procedural requirements.
- 1.3 In the course of an investigation into other matters conducted by ASIC from about October 1997 until about October 1998 ASIC identified a number of concerns in the manner in which Mr Cunningham acted as an authorised representative of DJ Carmichael.
- 1.4 In a Notice of Hearing dated 29 October 1998, ASIC gave notice to Mr Cunningham that, based on the concerns referred to above, it had reason to believe that Mr Cunningham had not performed efficiently, honestly and fairly his duties as a representative of a dealer.
- 1.5 A hearing was held on 15 January 1999 pursuant to the Notice of Hearing.
- 1.6 On 24 February 1999, following consultation with Mr Cunningham's solicitors, ASIC's delegate made an order ("the Order") that Mr Cunningham be prohibited from acting as a representative of a securities dealer unless he complied with certain conditions ("the Decision").
- 1.7 On 8 March 1999, pursuant to the Order:
 - (a) Mr Cunningham advised ASIC that he intended to act as a representative of DJ Carmichael; and
 - (b) DJ Carmichael advised ASIC that, as the holder of Dealers Licence #11310, they undertook to supervise Mr Cunningham in terms of the order,

and that they nominated Bevan Sturgess-Smith as being responsible for the supervision of Mr Cunningham.

- 1.8 On 26 May 1999 Mr Cunningham made application to the Administrative Appeals Tribunal for a review of the Decision.
- 1.9 ASIC has agreed to accept the undertakings contained in this document in place of the Order.

2. UNDERTAKING

2.1 In this undertaking:

- (a) "the licensee" means the securities dealer or investment adviser of whom Mr Cunningham is a representative from time to time; and
- (b) "supervisor" means the person appointed by DJ Carmichael or by another licensee pursuant to clause 2.2(b).

2.2 Mr Cunningham undertakes that for the period from the date of this document until 24 February 2000 he will not act as a representative of a securities dealer or an investment adviser unless:

- (a) not less than 14 days prior to commencing as a representative of a securities dealer or an investment adviser other than DJ Carmichael, he provides ASIC with the following:
 - (i) written notification that he intends to act as a representative of a particular securities dealer or investment adviser from a particular date;
 - (ii) an original letter from the licensee confirming that the licensee undertakes to supervise him in the manner set out in this order;
- (b) within 14 days after he commences as a representative of the licensee, the licensee nominates a director or principal responsible for the supervision of Mr Cunningham ("supervisor") and notifies ASIC (Attention: Marcus Claridge) of the name of that person;
- (c) in addition to any other measures the licensee has in place for the supervision of its representatives:
 - (i) the licensee requires Mr Cunningham to provide a fortnightly written report as to the trading activities overseen by him on behalf of the licensee. The report will annex copies of all new client accounts opened by him, any relevant authorities to open or trade upon accounts and the advisor copies of the buy and sell order forms completed by Mr Cunningham;


- (ii) within 7 days of the end of each month the supervisor conducts a review, documented in writing, to determine whether Mr Cunningham has performed his duties as a representative of the licensee, in accordance with the Corporations Law, during the previous month;
- (iii) if the supervisor considers Mr Cunningham has not performed his duties, in that he:
 - (A) has breached the Corporations Law; and/or
 - (B) has not performed his duties efficiently, honestly and fairly;
 the licensee immediately provides ASIC (Attention: Marcus Claridge) with details of the substance of its concerns; and
- (iv) the licensee, or licensees as the case may be, submit to an audit of Mr Cunningham's duties as a representative of the licensee to be conducted by ASIC randomly and at least twice during the period until 24 February 2000. The results of such audits will be given to the licensee.


3. ACKNOWLEDGMENTS

3.1 Mr Cunningham acknowledges that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

Signed by Anthony Raymond Cunningham)
in the presence of:)






Signature

Mara Caramanico
Name (printed)

cl- ASIC
Address

This 11 day of August 1999.

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



Michael Gething
Counsel

This 17th day of August 1999.