

## ENFORCEABLE UNDERTAKING

### SECTION 93AA

#### AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ACT

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

Paritech Pty Ltd ("the company")  
(ACN 078 082 603)  
10<sup>th</sup> Floor  
420 St Kilda Road  
Melbourne Vic 3004

#### 1. BACKGROUND:-

- 1.1 ASIC has undertaken investigations in relation to suspected contraventions of Part 7.3 of the Corporations Law ("the Law") arising out of the marketing, advertising, distribution and sale of certain computer software in the period from March 1998 to July 1999 ("the investigations").
- 1.2 As a result of the investigations, ASIC has reason to suspect that the company has contravened section 781 of the Law by reason of the facts set out in paragraph 2 below.
- 1.3 ASIC has the power pursuant to section 1324 of the Law to seek an injunction restraining the company from contravening the Law.
- 1.4 ASIC has agreed to accept the commitments in this enforceable undertaking as an alternative to the exercise of the power referred to paragraph 1.3 above.

#### 2. CONCERNS OF ASIC

- 2.1 From or about March 1998, the company conducted a business, *inter alia*, of marketing, advertising, distributing and selling the computer software referred to in paragraph 2.2 hereof ("the conduct").
- 2.2 OmniTrader 3.5 ("OmniTrader") is a computer software programme produced by Nirvana Systems Incorporated ("Nirvana"), a company incorporated in the United States of America. On or about 6 March 1998, Nirvana appointed the company as the sole Australian distributor of OmniTrader.
- 2.3 The OmniTrader programme:

- (a) provides an analysis of securities market trading information for the purposes of analysing market trends and making or assisting in the making of investment decisions;
  - (b) utilises mathematical formulae, historical securities prices and other financial and economic information to generate buy and sell signals about particular securities;
  - (c) provides a "voting" function to identify "buy" and "sell" signals in respect of particular securities over a selected period of time;
  - (d) incorporates a "trading advisor" feature which explains why the system has generated any particular buy or sell signal;
  - (e) provides an "advisor rating" which describes the relative strength of the buy or sell signal, on a scale between 1 and 100; and
  - (f) contains an integrated portfolio management system to record trades, as well as the resultant gains and losses ("the functions").
- 2.4 The company does not hold a licence from ASIC to carry on an investment advice business or as an investment adviser, as required by section 781 of the Law. The company is not an exempt investment adviser.
- 2.5 Pursuant to Policy Statement 118 issued by ASIC on 3 March 1997, an entity carrying on a business of distributing a programme which performs the functions, must be licensed, whether as a securities dealer or investment adviser, as appropriate.
- 2.6 On or about 9 July 1999, the company submitted an application to ASIC for a security dealer's licence, although the application also referred to an application for an investment adviser's licence.
- 2.7 On 22 and 23 July 1999, the company admitted that in carrying out the conduct, it may have contravened section 781 of the Law. The company also admits that it has now ceased the conduct which gave rise to that contravention.

### 3. UNDERTAKINGS

The company gives the following enforceable undertakings to ASIC pursuant to section 93AA of the Australian Securities and Investments Commission Act.

- 3.1 The company undertakes to cease the conduct anywhere in Australia from 30 July 1999, until such time as it acquires an appropriate licence from ASIC in accordance with the provisions of the Law.
- 3.2 The company undertakes to maintain a permanent record on file, of all orders and/or invoices forwarded to clients in respect of each and every OmniTrader package and upgrade ordered, up to 30 July 1999 and to make available such files and/or records for inspection by ASIC or its representatives upon request.

- 3.3 The company undertakes not to engage in any activity which is similar to the conduct in relation to any other computer software offering functions similar to the functions.
- 3.4 The company undertakes to remove all references to OmniTrader or to any other computer software offering similar functions to the functions from its internet homepage from 30 July 1999 and will continue to make no reference to OmniTrader or such other computer software therein, until such time as it acquires an appropriate licence from ASIC.
- 3.5 The company undertakes to inform Nirvana, within 7 days of the date of execution of this enforceable undertaking by the company, of the contents and effect of this enforceable undertaking.

#### 4. ACKNOWLEDGMENTS

- 4.1 The company acknowledges that it has had the opportunity to obtain legal advice in relation to the content and effect of this enforceable undertaking.
- 4.2 The company acknowledges that ASIC:
- (i) will issue a media release on the execution of this enforceable undertaking referring to such terms that ASIC determines and which led to the execution of the enforceable undertaking;
  - (ii) will make this enforceable undertaking available for public inspection, and
  - (iii) may from time to time publicly refer to this enforceable undertaking.
- 4.3 The company acknowledges that entering into this enforceable undertaking in no way derogates from the rights and remedies available to any person arising from any conduct described in this enforceable undertaking.
- 4.4 Subject to paragraph 1.4 hereof, the company further acknowledges that entering into this enforceable undertaking in no way derogates from the rights of ASIC relating to or arising from any conduct described in this enforceable undertaking.
- 4.5 The company acknowledges that this enforceable undertaking has no operative force until accepted by ASIC.

THE COMMON SEAL OF PARITECH PTY LTD  
(ACN 078 082 603)  
THE FIXING OF WHICH  
WAS WITNESSED BY:

  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

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



Name *A. J. ORCHARD*

Position *ENFORCEMENT DIRECTOR (VICTORIA)*

This *4<sup>th</sup>* day of *AUGUST* 1999