

**ENFORCEABLE UNDERTAKING****AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION****SECTION 93AA**

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

Qi Zhu
1/6 Bickell Road
MOSMAN NSW 2088

1. BACKGROUND

- 1.1 ASIC has conducted an investigation in relation to suspected contraventions of sections 845, 995 and 1267 of the Corporations Law in relation to trading activity conducted by Qi Zhu ("Zhu") in various securities listed on the Australian Stock Exchange Limited ("ASX") and in various futures contracts on the Sydney Futures Exchange Limited ("SFE") during the period 20 July 1998 to 22 September 1999 ("the Relevant Period").
- 1.2 As a result of the Investigation, ASIC has reason to suspect that Zhu:
- (a) has contravened section 995 of the Corporations Law (misleading or deceptive conduct) by reason of the facts set out in paragraphs 1.8(c)-(d), 1.10(a)-(b), 1.13(c)-(d), 1.15 and 1.18(b)-(c) below;
 - (b) did not perform the duties of a securities representative efficiently, honestly and fairly by reason of the facts set out in paragraphs 1.8, 1.10, 1.13, 1.15, and 1.18 below; and
 - (c) will not in the future perform the duties of a securities representative efficiently, honestly and fairly by reason of the facts set out in paragraphs 1.8, 1.10, 1.13, 1.15, and 1.18 below.
- 1.3 ASIC has the power pursuant to section 829 of the Corporations Law to make a banning order against a natural person if, inter alia:
- (a) he has contravened a securities law;
 - (b) ASIC has reason to believe that he has not performed efficiently, honestly and fairly the duties of a representative of a dealer; or
 - (c) ASIC has reason to believe that he will not perform efficiently, honestly and fairly the duties of a representative of a dealer.
- 1.4 Section 830 of the Corporations Law provides that ASIC, after complying with section 837(2), may make a banning order to prohibit a person permanently, or for a specified period, from doing an act as:
- (a) a representative of a dealer; and/or
 - (b) a representative of an investment adviser.

- 1.5 ASIC has agreed to accept the commitments in this undertaking as an alternative to the exercise of the power referred to in paragraph 1.3 and 1.4 above.
- 1.6 During the period 20 July 1998 to 12 April 1999 ("the First Period"), Zhu held a proper authority from BT Alex Brown Australia Limited ("BT") (the holder of a dealer's licence).
- 1.7 During the First Period, Zhu had a discretion to place orders to buy and sell securities in respect of 2 client accounts of BT ("the BT Accounts"), and effected sales and purchases of securities on those accounts. Zhu had a relevant interest in the BT Accounts, in that he had the power to acquire and dispose of shares on those accounts.
- 1.8 In the First Period, Zhu:
 - (a) did not seek or obtain written authorisation to operate the BT Accounts on a discretionary basis, nor did he keep a register of the BT Accounts (thereby failing to comply with ASX Business Rule 3.4);
 - (b) did not properly record on orders for the purchase and sale of securities for the BT Accounts the time the order was received and the identity of the natural person placing the order (thereby failing to comply with ASX Business Rule 1.2.1);
 - (c) misled BT by failing to inform BT at the time that he had a relevant interest in the BT Accounts (thereby contravening section 995 of the Corporations Law); and
 - (d) endorsed cheques on the BT Accounts not in his own name but rather in the names of the clients whose names those accounts were opened (thereby contravening section 995 of the Corporations Law).
- 1.9 During the First Period whilst an employee and a proper authority holder of BT, Zhu opened 2 client accounts with Bell Securities Limited and 2 client accounts with C, A & L Bell Commodities Corporation Pty Limited (collectively, "the Bell Accounts"). Zhu had a relevant interest in the Bell Accounts, in that he had the power to acquire and dispose of shares on those accounts.
- 1.10 In the First Period, Zhu:
 - (a) misled Bell Securities Limited and C, A & L Bell Commodities Corporation Pty Limited and BT by failing to inform them that he had a relevant interest in the Bell Accounts (thereby contravening section 995 of the Corporations Law); and
 - (b) misled Bell Securities Limited and C, A & L Bell Commodities Corporation Pty Limited by signing documents relating to the Bell Accounts not in his name but rather in the names of the clients whose names those accounts were opened in (thereby contravening section 995 of the Corporations Law).
- 1.11 During the period 19 April 1999 to 20 August 1999 ("the Second Period"), Zhu held a proper authority from HSBC Securities Australia Limited ("HSBC") (the holder of a dealer's licence).

- 1.12. During the Second Period, Zhu had a discretion to place orders to buy and sell securities in respect of 3 client accounts of HSBC ("the HSBC Accounts"), and effected sales and purchases of securities on those accounts. Zhu had a relevant interest in the HSBC Accounts, in that he had the power to acquire and dispose of shares on those accounts.
- 1.13. In the Second Period, Zhu:
- (a) did not seek or obtain written authorisation to operate the HSBC Accounts on a discretionary basis, nor did he keep a register of the HSBC Accounts (thereby failing to comply with ASX Business Rule 3.4);
 - (b) did not properly record on orders for the purchase and sale of securities for the HSBC Accounts the time the order was received and the identity of the natural person placing the order (thereby failing to comply with ASX Business Rule 1.2.1);
 - (c) misled HSBC by failing to inform HSBC at the time that he had a relevant interest in the HSBC Accounts (thereby contravening section 995 of the Corporations Law); and
 - (d) misled HSBC by failing to inform HSBC at the time that he had a relevant interest in the Bell Accounts (thereby contravening section 995 of the Corporations Law).
- 1.14. On or about 20 July 1999, Zhu opened a client account with Potter Warburg Securities Pty Limited ("Potter") in another name ("the Potter Account"). Zhu had a discretion to place orders to buy and sell securities on the Potter Account, and effected a sale of securities on the Potter Account. Zhu had a relevant interest in the Potter Account, in that he had the power to acquire and dispose of shares on that account.
- 1.15. By opening and operating the Potter Account, Zhu:
- (a) misled HSBC at the time by failing to inform HSBC that he had a relevant interest in the Potter Account (thereby contravening section 995 of the Corporations Law).
 - (b) misled Potter by signing account opening documentation not in his own name but in the name of the client whose name the account was opened (thereby contravening section 995 of the Corporations Law).
- 1.16. In the period 30 August 1999 to 30 September 1999 ("the Third Period"), Zhu acted for Hudson Securities Pty Limited ("Hudson").
- 1.17. During the Third Period, Zhu had a discretion to place orders to buy and sell securities in respect of 3 client accounts of Hudson ("the Hudson Accounts"), and effected sales and purchase on those accounts. Zhu had a beneficial interest in the Hudson Accounts, in that he had the power to acquire and dispose of shares on those accounts.
- 1.18. In the Third Period, Zhu
- (a) received orders to buy and sell securities on behalf of clients without holding a proper authority from Hudson;

- (b) misled Hudson through opening the Hudson Accounts by signing account opening documentation not in his name but rather in the name of the clients whose names those accounts were opened in (thereby contravening section 995 of the Corporations Law);
- (c) misled Hudson by failing to disclose that he had a relevant interest in the Hudson Accounts (thereby contravening section 995 of the Corporations Law).

1.19 Zhu acknowledges the concerns of ASIC referred to above and accordingly offers the undertakings set out in section 2 below.

2. UNDERTAKINGS

Pursuant to section 93AA of the Australian Securities and Investments Commission Act ("ASC Law"), Zhu gives the following undertakings:

2.1 Zhu will not for a period of 3 years commencing 7 January 2000:

- (a) do any act or engage in any conduct as a representative of a dealer (as defined by the Corporations Law from time to time);
- (b) hold out that he is a representative of a dealer;
- (c) hold a proper authority from a dealer;
- (d) hold out that he holds a proper authority from a dealer;
- (e) do any act or engage in any conduct as a representative of an investment adviser (as defined by the Corporations Law from time to time);
- (f) hold out that he is a representative of an investment adviser;
- (g) hold a proper authority from an investment adviser;
- (h) hold out that he holds a proper authority from an investment adviser;
- (i) carry on the business of a securities dealer either directly or indirectly as a director, partner, manager, servant or agent;
- (j) carry on the business of an investment adviser either directly or indirectly as a director, partner, manager, servant or agent;
- (k) apply to ASIC for a dealers licence; and
- (l) apply to ASIC for an investment advisers licence.

2.2 Prior to recommencement as a representative of either a dealer or an investment adviser, and/or recommencing the carrying on either of a securities business or the business of an investment adviser at the expiration of the 3 year prohibition, Zhu will -

- (a) enrol in, attend and satisfactorily complete the subject Securities Industry Law and Ethics which is part of the Securities Institute of Australia's Graduate Diploma of Applied Finance and Investment course and
- (b) provide the Director of Enforcement, NSW Regional Office of ASIC, with a statutory declaration that he has satisfactorily completed the subject Securities Industry Law and Ethics as referred to in sub-clause 2.2(a) above.

3. ACKNOWLEDGMENTS

3.1 Zhu 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;
- (c) will make this undertaking available for public inspection.

3.2 Zhu acknowledges 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.

3.3 Zhu acknowledges that this undertaking has no operative force until accepted by ASIC.

3.4 Zhu acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from past or future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a civil pecuniary order against Zhu.

Signed by Qi Zhu
in the presence of:

Signature:

Name in print:

This 23rd day of March 2000

Qi ZHU

W. G. McNALLY
Solicitor
WITNESS

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

Jan Redfern
General Counsel
NSW Operations

This 14th day of March 2000

