

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

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

Tim Francis Connolly
C/- Cara Marasco & Company
Suite 3
515 Pittwater Road
BROOKVALE NSW 2100

1. Background

- 1.1 ASIC has conducted inquiries in relation to suspected contraventions of section 995 of the Corporations Law in relation to trading activity conducted by Tim Francis Connolly ("Connolly") in various securities listed on the Australian Stock Exchange Limited ("ASX") during the period 29 March 1999 to 19 May 2000 ("the Relevant Period").
- 1.2 As a result of these inquiries, ASIC has reason to suspect that Connolly:
- (a) has contravened section 995 of the Corporations Law (misleading or deceptive conduct) by reason of the facts set out in paragraphs 1.8 and 1.11;
 - (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 and 1.11;
 - (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 and 1.11
- 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 advisor.
- 1.5 ASIC has agreed to accept the commitments in this undertaking as an alternative to the exercise of the power referred to in paragraphs 1.3 and 1.4 above.
- 1.6 During the period 29 March 1999 to 28 February 2000 ("the First Period"), Connolly held a proper authority from Merrill Lynch Private (Australia) Limited ("Merrill Lynch") (the holder of a dealer's licence).
- 1.7 ASIC alleges that during the First Period, Connolly:
- (a) effected sales and purchases of securities on behalf of a client of Merrill Lynch ("Client 1"), without the authorisation of that client; and
 - (b) told a client of Merrill Lynch ("Client 2") that an order to purchase securities had been executed in accordance with that client's instructions when no such order had been executed and was not executed for a further two weeks at a price materially worse than could have been obtained had the client's instructions been complied with.
- 1.8 ASIC also alleges that in the First Period, Connolly:
- (a) did not seek or obtain written authorisation to operate Merrill Lynch accounts on a discretionary basis, nor did he keep a register of Client 1 (therein failing to comply with ASX Business Rule 3.4);
 - (b) misled Merrill Lynch by failing to inform Merrill Lynch that Client 1 did not authorise those orders referred to in clause 1.7(a) above at the time those orders were placed (therein contravening section 995 of the Corporations Law); and
 - (c) engaged in misleading and deceptive conduct by telling Client 2 that an order to purchase securities had been executed in accordance with that client's instructions when no such order had been executed and was not executed for a further two weeks at a price materially worse than could have been obtained had the client's instructions been complied with (therein contravening section 995 of the Corporations Law).
- 1.9 During the period 6 March 2000 to 19 May 2000, ("the Second Period"), Connolly held a proper authority from Johnson Taylor Potter Limited ("JTP") (the holder of a dealer's licence).
- 1.10 ASIC alleges that during the Second Period, Connolly effected sales and purchases of securities on behalf of clients of JTP ("JTP Clients"), without the authorisation of those clients. As a consequence the securities portfolio of those clients decreased in value by approximately \$388,000.00.

1.11 ASIC also alleges that in the Second Period, Connolly:

- (a) did not seek or obtain written authorisation to operate the JTP Clients on a discretionary basis, nor did he keep a register of the JTP Clients (therein failing to comply with ASX Business Rule 3.4);
- (b) misled JTP by failing to inform JTP that the JTP Clients did not authorise those orders referred to in clause 1.10 above at the time those orders were placed (therein contravening section 995 of the Corporations Law);
- (c) traded in warrants on behalf of clients prior to them signing the ASX Derivatives Client Agreement Form (therein failing to comply with ASX Business Rule 8.14).

1.12 ASIC acknowledges that Connolly has made substantial financial restitution to JTP and has agreed with JTP to make full financial restitution over a period of time, in relation to reimbursements JTP has made to the JTP Clients, as a consequence of the trading activity referred to in clause 1.10 above.

1.13 Connolly, without admissions as to liability, 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 ("ASIC Law"), Connolly gives the following undertakings:

- 2.1 Connolly will not for a period of three years commencing on 29 June 2001 (the "Restricted Period"):
- (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, Connolly 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 Regional Commissioner, 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.
- 2.3 Connolly undertakes to notify his present employer and any subsequent employer, during the Restricted Period, of the terms of this undertaking, such notification to be made:
- (a) within 7 days of ASIC accepting this undertaking, in respect of his present employer; and
 - (b) prior to commencing employment with any subsequent employer.
- 2.4 Connolly will provide ASIC with verification of his compliance with clause 2.3 within 24 hours of the due date for notification specified in that clause by providing a statutory declaration to that effect to the Regional Commissioner, NSW Regional Office of ASIC.

3. Acknowledgments

- 3.1 Connolly 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 Connolly 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 Connolly acknowledges that this undertaking has no operative force until accepted by ASIC.
- 3.4 Connolly 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 Connolly.

Signed by Tim Francis Connolly)

In the presence of:)

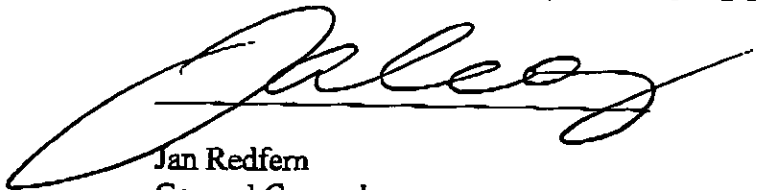


Signature: *m Connolly*

Name in print: *MERLYN FRANCIS CONNOLLY*

This *25th* day of June 2001.

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



Jan Redfern
General Counsel
NSW Operations

This *26th* day of June 2001

