

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

SECTION 93AA

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

- (a) Norman Peter Glenn  
7 Greenvale Drive  
Gisborne Vic. 3437  
("Glenn")
- (b) Capital Gateway Pty Ltd  
ACN 078 721 767  
57- 59 Horne Street  
Sunbury Vic. 3429  
(" Capital Gateway")

**1. Background**

1.1 ASIC has conducted inquiries in relation to suspected contraventions of section 849 and 851 of the Corporations Act 2001 (" the Act") arising out of or in connection with securities recommendations and advice given by Glenn to clients who have invested in managed investment schemes promoted by Lifestyle Property Investments Pty Ltd ("LPI") during the period from 1 April 1998 to 13 July 2000 (" the relevant period").

1.2 As a result of these inquiries :

- (a) by reason of the facts set out in paragraph 1.7, ASIC has reason to suspect that Glenn and /or Capital Gateway have contravened sections 780 (unlicensed dealing in securities), 781 (unlicensed investment advice



business), 849 (non-disclosure of particulars of commissions or fees) and 851 (no reasonable basis for investment recommendations) of the Act;

(b) by reason of the facts set out in paragraph 1.7 and 1.8, ASIC has reason to believe that Glenn will not in the future perform the duties of a representative of a dealer efficiently, honestly and fairly.

1.3 ASIC has the power to section 829 of the Act 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 will not perform efficiently, honestly and fairly the duties of a representative of a dealer.

1.4 Section 830 of the Act 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 relevant period:

(a) Glenn was a proper authority holder enabling him to represent IFMA Investment Services Pty Ltd

(b) Glenn was the sole director and shareholder of Capital Gateway;

(c) Glenn used Capital Gateway as a vehicle to provide advice concerning investment opportunities to clients;

(d) Capital Gateway did not at any stage hold a securities dealer's licence



1.7 ASIC alleges that during the relevant period:

(a) Glenn and/or Capital Gateway, not being licensed so to do, carried on a securities business and/or investment advice business in the course of which:

- (i) Glenn made securities recommendations to 10 of his clients to invest in Development Partnerships offered by LPI;
- (ii) For introducing clients of Glenn to LPI, Capital Gateway received commissions totaling \$30,828 from LPI on investments made by those clients,

thereby contravening sections 780 and / or 781 of the Act;

(b) Glenn made securities recommendations to 3 of his clients to invest in Development Partnerships offered by LPI (the LPI recommendations") without having a reasonable basis for those recommendations, in each case thereby contravening section 851 of the Act;

(c) at the time of making LPI recommendations, Glenn failed to disclose to the clients concerned particulars of the commission or fee that Capital Gateway would receive if the client invested in such Development Partnerships as a result of the recommendation, in each case thereby contravening section 849 of the Act;

1.8 ASIC also alleges that:

(a) When making the LPI recommendations , Glenn failed adequately to explain to the clients concerned:

- (i) the risks associated with the recommendations and the possibility of losses being suffered if the clients followed them;
- (ii) that he did not or did not intend to make the recommendations as a representative of IFMA;



(iii) the respective roles of himself and Capital Gateway in making those recommendations,

whereby the clients were not enabled to make an informed decision about whether or not to accept the recommendations,

(b) Glenn knew or ought to have known that the investments the subject of LPI recommendations were unregistered managed investment schemes operated in contravention of section 601ED of the Act;

(c) Glenn exerted inappropriate pressure on one of the clients to invest in accordance with the LPI recommendation made to that client;

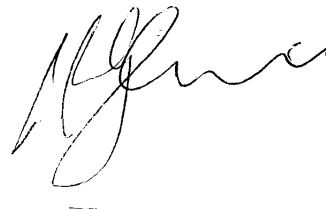
(d) Glenn unconscionably and unreasonably requested the clients to whom the LPI recommendations were made to sign certain documents (which were not of a type that would be routinely executed between a client and an investment advisor in relation to a securities recommendation) in circumstances where he knew or ought to have known that the clients concerned were relying on Glenn's expertise and advice, were unlikely to have understood the nature or effect of those documents, and would not have signed them if they had understood their nature and effect.

1.9 Glenn and Capital Gateway, without admissions as to liability, acknowledge the concerns of ASIC referred to above and accordingly offer the undertakings set out in Sections 2 and 3 below.

## 2. Undertaking by Glenn

Pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001 ("ASIC Act"), Glenn gives the following undertakings:

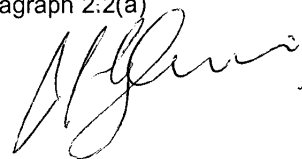
2.1 Glenn will not for a period of five years commencing on 1 November 2001 ("the restriction period"):



- (a) do any act or engage in any conduct as, or hold out that he is, a representative of a dealer of an investment advisor (as defined in the Act);
- (b) hold, or hold out that he holds, a proper authority from a dealer or an investment adviser;
- (c) either directly or indirectly as a director, partner, manager, servant or agent:
  - (i) carry on a securities business (as defined in the Act) or hold out that he carries on such a business;
  - (ii) carry on an investment advice business or hold out that he is an investment advisor.
- (d) apply to ASIC for a dealers licence or an investment advisors licence.

2.2 Prior to him conducting a financial services business within the meaning of the Act (as in force after the commencement of the Financial Services Reform Act 2001) or either directly or indirectly as a director, partner, manager, employee, agent or authorised representative participating in such a business with respect to the financial products defined in sections 763A(1)(a) and 763B of the Act (as in force after the commencement of the Financial Services Reform Act 2001), Glenn 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) complete the remaining 4 modules required for the Diploma of Financial Planning and not yet completed by him;
- (c) provide the Regional Commissioner, Victorian Regional Office of ASIC, with a Statutory Declaration that he has satisfactorily completed the subject *Securities Industry Law and Ethics* referred to in paragraph 2:2(a)



above and completed the four remaining modules of the Diploma of Financial Planning referred to in paragraph 2.2(b) above.

2.3 On and from 11 March 2002 until the end of the restriction period, Glenn will not conduct a financial services business within the meaning of the Act (as in force after the commencement of the Financial Services Reform Act 2001) or either directly or indirectly as a director, partner, manager, employee, agent or authorised representative participate in such a business with respect to the financial products defined in sections 763A(1)(a) and 763B of the Act (as in force after the commencement of the Financial Services Reform Act 2001).

2.4 Glenn will not be precluded from applying for a licence under Part 7.6 of Act (as in force after the commencement of the Financial Services Reform Act 2001) or from being a director, partner, manager employee, agent or authorised representative of the holder of such licence if the licence does not enable the holder to operate a financial services business with respect to the financial products defined in section 763A(1)(a) and 763B of the Act (as in force after the commencement of the Financial Services Reform Act 2001”).

### 3. Undertakings by Capital Gateway

Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* (“ASIC Act”), Capital Gateway gives the following undertakings:

3.1 Capital Gateway will not for a period of five years commencing on 1 November, 2001 (the “restriction period”):

- (a) either directly or indirectly as a director, partner, manager, servant or agent:



- (i) carry on a securities business (as defined in the Act) or hold out that it carries on such a business;
  - (ii) carry on an investment advice business or hold out that it is an investment advisor.
- (b) apply to ASIC for a dealers licence or an investment advisers licence.

3.2 On and from 11 March 2002 until the end of the restriction period, Capital Gateway will not conduct a financial services business within the meaning of the Act (as in force after the commencement of the Financial Services Reform Act 2001) or either directly or indirectly as a director, partner, manager, employee, agent or authorised representative participate in such a business with respect to the financial products defined in sections 763A(1)(a) and 763B of the Act (as in force after the commencement of the Financial Services Reform Act 2001).

3.3 Capital Gateway will not be precluded from applying for a licence under Part 7.6 of Act (as in force after the commencement of the Financial Services Reform Act 2001) or from being a director, partner, manager employee, agent or authorised representative of the holder of such licence if the licence does not enable the holder to operate a financial services business with respect to the financial products defined in section 763A(1)(a) and 763B of the Act (as in force after the commencement of the Financial Services Reform Act 2001”).

#### 4. Acknowledgments

4.1 Glenn and Capital Gateway acknowledge 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.

A handwritten signature in black ink, appearing to be 'M. Glenn', is located in the bottom right corner of the page.

4.2 Glenn and Capital Gateway acknowledge 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.

4.3 Glenn and Capital Gateway acknowledge that this undertaking has no operative force until accepted by ASIC.

4.4 Glenn and Capital Gateway acknowledge 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 penalty order against them or either of them.

**SIGNED** by NORMAN PETER GLENN )  
this 20<sup>th</sup> day of February 2002 in the )  
presence of: )

Signature: ..... *Norman Peter Glenn* .....

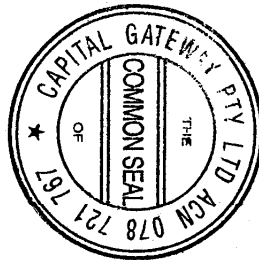
Print name:..... *NORMAN PETER GLENN* .....



**THE COMMON SEAL** of CAPITAL )  
GATEWAY PTY LTD was affixed in )  
accordance with its constitution this )  
day of February 2002 in the presence of: )

Sole Director:..... *Norman Peter Glenn* .....

Name: Norman Peter Glenn



**ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
PURSUANT TO SECTION 93AA OF THE AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION ACT 2001 BY ITS DULY AUTHORISED DELEGATE:**

..... *Richard* .....

This 20<sup>th</sup> day of February 2002.