

**ASIC**

Australian Securities & Investments Commission

ENFORCEABLE UNDERTAKING**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION****Section 93AA Australian Securities & Investments Commission Act 2001**

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

Oliver Nelson Towns Osborne
8 Cedar Avenue
GLENUNGA SA

1. Background

- 1.1 At all material times Oliver Nelson Towns Osborne ("Mr Osborne") was the holder of a proper authority from Intervest Securities Pty Ltd ("Intervest"), a Licensed Dealer in Securities.
- 1.2 In or around early October 2000 Mr Osborne told a client of Intervest about CITA Biomedical Inc, a company based in the United States of America and whose stock is traded on the Over The Counter Bulletin Board market. Mr Osborne provided the client with contact details for an entity called The Madison Group of 23rd Floor M Thai Tower All Seasons Place 87 Wireless Road Phatumwan Bangkok ("The Madison Group"). Mr Osborne told the client that The Madison Group was seeking people to invest in CITA Biomedical Inc.
- 1.3 Under section 780(1) of the *Corporations Act 2001* (Cth) (the Corporations Act) a person must not carry on a securities business or hold out that the person carries on a securities business unless the person holds a dealers licence or is an exempt dealer.
- 1.4 The Madison Group was not at any time a licensed securities dealer.

- 1.5 At the time Mr Osborne communicated this information to the client, The Madison Group had been included in a list published by ASIC on its website as an entity that engaged in the practice of "cold calling" and was not licensed as a securities dealer in Australia. That list had been compiled and published to alert investors to those overseas brokers who have made unsolicited calls to Australians and who do not hold a current securities dealers licence from ASIC.
- 1.6 Mr Osborne was aware of CITA Biomedical Inc and The Madison Group because he had previously been cold called by The Madison Group and had been sent promotional brochures by them.
- 1.7 Mr Osborne has stated he considered the information concerning CITA Biomedical Inc provided to him by The Madison Group was insufficient to enable a person to make an informed decision whether to invest.
- 1.8 CITA Biomedical Inc was not an approved investment of Interest and Mr Osborne was not permitted by Interest to make recommendations to clients about CITA Biomedical.
- 1.9 As a consequence of Mr Osborne providing the contact details for The Madison Group to the client, the client contacted, and ultimately transferred approximately \$187,000 to The Madison Group for the purpose of investing in CITA Biomedical and another company Progold. The client has been unable to recover the funds transferred to The Madison Group and it is unlikely that those funds will be able to be recovered.

2. Concerns of ASIC

- 2.1 ASIC has enquired into the matter and is concerned that Mr Osborne has:
- (a) contrary to section 851 of the Corporations Act, made a securities recommendation to the client when he did not have a reasonable basis for the recommendation;
 - (b) made securities recommendations to a client that they invest in securities that were not authorised by his principal; and
 - (c) referred a client to an unlicensed securities dealer.
- 2.2 As a result of those concerns, ASIC has reason to believe that Mr Osborne has not performed the duties of a securities representative efficiently and fairly.

3. Acknowledgement of ASIC's Concerns

- 3.1 ASIC has the power to pursuant to sections 829 and 830 of the Corporations Act to make an order banning a natural person who fails to act efficiently honestly and fairly from doing an act as a representative of a dealer or of an investment adviser either permanently or for a specified period.
- 3.2 In agreeing to accept the commitments in this undertaking as an alternative to the exercise of the powers referred to in paragraph 3.1, Mr Osborne acknowledges ASIC's concerns

3.3 Mr Osborne acknowledges ASIC's concerns that he has not adequately performed his duties in the securities industry as a representative of a securities dealer.

4. Undertakings

4.1 Pursuant to Section 93AA of the Australian Securities and Investments Commission Act 2001, Oliver Osborne hereby **undertakes that**:

(a) He will not:

- (i) if acting as a proper authority of a securities licensee, give any investment advice about or concerning securities that are not those approved by the securities licensee;
- (ii) if acting as a representative of the holder of an Australian Financial Service Licence ("AFSL"), give any financial product advice about or concerning financial products that are not those approved by the securities licensee.

(b) He will enrol, undertake and achieve a "pass" mark, in the Financial Planning Association's Subject CFP 1 "Professionalism, Ethics & Compliance" to commence on 12th August 2002. ("the course")

(c) Within 28 days of completing the course and receiving his results, he will make and lodge with the Assistant Director, Financial Services Enforcement (South/West) a statutory declaration that he has complied with paragraph 4.1(b) and stating the result obtained.

(d) If he fails to enrol in the course or if he fails to achieve a pass mark in the course, he will not until such time as he has achieved a pass mark in the course:

- (i) provide investment advice to any person;
- (ii) do an act as a representative of a securities dealer or of an investment adviser;
- (iii) apply to a holder of a securities dealers licence or of an investment advisers licence to become a representative of such a licence holder;
- (iv) apply to ASIC for a dealers licence or an investment advisers licence;
- (v) apply to ASIC for an AFSL;
- (vi) apply to a holder of an AFSL to become a representative of such a licence holder;
- (vii) do an act for which an AFSL or an authorisation from an AFSL holder is or would be required by law.

5. Acknowledgements

5.1 Mr Osborne acknowledges that:

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

5.2 Mr Osborne acknowledges that ASIC's acceptance of this undertaking in no way derogates from the rights and remedies available to ASIC or any other person arising from any conduct described in this undertaking.

5.3 Mr Osborne acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue criminal prosecution, or its power to lay charges or seek a pecuniary civil order.

5.4 Mr Osborne acknowledges that this undertaking has no operative force until accepted by ASIC.

SIGNED by: 

Oliver Nelson Towns Osborne

This 28th day of February 2002

In the presence of:

.. Diane K Sterck
Witness:

**DIANE. K. STERCK. ID No. 23919
Justice of the Peace in and for
the State of South Australia**

..... DIANE STERCK
Name: (print)

..... 100 Pine St ADELAIDE 5000

Address:

This 28th day of February 2002

ACCEPTED BY the Australian)
Securities & Investments)
Commission pursuant to the)
ASIC Act 2001 section 93AA by its)
duly authorised delcgate)

K. Axford
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Karen Axford
Regional Commissioner South Australia
Australian Securities & Investments Commission

This 28 day of February, 2002