



ENFORCEABLE UNDERTAKING

Section 93AA

Australian Securities and Investments Commission Act 2001 ("ASIC Act")

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

FREEHOLD INTERNATIONAL PTY. LTD. ("Freehold International") (ACN 070 612 832)

C/- Saward Dawson,
20 Albert Street,
Blackburn VIC 3130.

AND

OPTIONEER SYSTEMS PTY. LTD. ("Optioneer Systems") (ACN 094 401 635)

56 Clowes Street,
South Yarra VIC 3141.

1. Background

1.1. The Australian Securities and Investments Commission ("ASIC") has made enquiries in relation to suspected contraventions of Part 8.3 of the *Corporations Act 2001* ("the Corporations Act") arising out of:

- (a) the distribution of computer hardware; and
- (b) the distribution of computer software,

offered by Freehold International and supplied by Optioneer Systems to Freehold International, and:

- (c) the provision of training and educational services,

by Freehold International and Optioneer Systems in conjunction with the lending of the hardware and software by Freehold International in the period from about September 2000 to November 2001.

1.2. Freehold International was conducting a business or businesses which involved, *inter alia*, supplying:

- (a) a system comprising computer hardware, computer software and historical data described as the Optioneer System ("**Optioneer**") that is able to or is represented as being able to assist users in the making of decisions in relation to the purchase, sale or holding of futures options,

and in particular, has or is represented to have the following functions or capabilities:

- (i) collates and analyses futures contract trading data downloaded from the internet for the purposes of assisting users in the making of decisions in relation to the purchase, sale or holding of futures options;
- (ii) utilises mathematical formulae for the purposes of assisting users in the making of decisions in relation to the purchase, sale or holding of futures options; and
- (iii) calculates the probability that the price of a futures contract will exceed bounds selected by the user for the purposes of assisting users in the making of decisions in relation to the purchase, sale or holding of options over the relevant futures contract ;

(paragraph (a) is referred to as "**the Optioneer system**")

- (b) training in both the use of the Optioneer system and how the Optioneer system should be utilised to assist in the making of decisions in relation to the purchase, sale or holding of futures options; and
- (c) training, guidelines and knowledge concerning futures options, to assist in the making of decisions in relation to the purchase, sale or holding of futures options.

(paragraphs (b) to (c) inclusive are together referred to as "**the Other Services**")

- 1.3 Optioneer Systems was conducting a business or businesses which involved, *inter alia*, supplying to Freehold International the Optioneer system and the historical data to users of the Optioneer system and assisting Freehold International in providing the Other Services.
- 1.4 Freehold International does not hold a licence from ASIC to carry on a futures advice business or to act as a futures adviser, as required by section 1143 of the Corporations Act. Freehold International is not an exempt futures adviser.
- 1.5 Optioneer Systems does not hold a licence from ASIC to carry on a futures advice business or to act as a futures adviser, as required by section 1143 of the Corporations Act. Optioneer Systems is not an exempt futures adviser.
- 1.6 Freehold International and Optioneer Systems became aware of ASIC's enquiries and, acting on their own volition, approached ASIC to discuss whether or not Freehold International or Optioneer Systems required a futures advisers license.
- 1.7 As a result of making the enquiries and having discussions with Freehold International and Optioneer Systems, ASIC formed the opinion that Freehold International and Optioneer Systems were carrying on a futures advice business without being licensed as required by the Corporations Act and without being an exempt futures adviser.

- 1.8 Freehold International and Optioneer Systems acknowledge ASIC's concerns but do not believe they were carrying on a futures advice business.
- 1.9 Freehold International and Optioneer Systems voluntarily agreed to cease providing the Optioneer system and the Other Services until licensed by ASIC or otherwise authorised in accordance with the provisions of the Corporations Act.
- 1.10 It is common ground after enquiry by ASIC that:
- (a) ASIC has not received any complaints from users of the Optioneer system or the Other Services in respect of either Freehold International or Optioneer Systems;
 - (b) On 3 December 2001 Freehold International applied to ASIC for a futures advisers licence and that application is pending.
- 1.11 ASIC has the power to seek an injunction restraining Freehold International and Optioneer Systems from contravening the Corporations Act.
- 1.12 ASIC has agreed to accept the commitments in this enforceable undertaking as an alternative to the exercise of the powers referred to in paragraph 1.11 above.

2. Undertakings

- 2.1. Freehold International and Optioneer Systems each give the following enforceable undertakings to ASIC pursuant to section 93AA of the ASIC Act.
- 2.2. Freehold International undertakes that:
- (a) it will not sell or otherwise supply or provide:
 - (i) the Optioneer system (other than the historical data) or any other computer hardware or software that has or is represented to have the functions or capabilities described in paragraph 1.2(a); or
 - (ii) the Other Services or any of them,to members of the public until such time as it holds a futures advisers licence or is otherwise authorised in accordance with the provisions of the Corporations Act;
 - (b) it will provide to ASIC a complete list of each person to whom it has sold the Optioneer system or the Other Services up to and including the date of execution of this enforceable undertaking within 14 days of signing this enforceable undertaking ("the Clients");
 - (c) if Freehold International's application for a futures advisers licence is refused, Freehold International will:

- (i) within 14 days of receiving notice of the refusal it will inform each of the Clients in writing in the form of attachment A and will attach to that letter a complete copy of this enforceable undertaking (excluding attachment A); and
 - (ii) within 21 days of receiving notice of the refusal it will provide to ASIC copies of all communications with Clients referred to in sub-paragraph 2.2(c)(i).
- (d) if Freehold International obtains a futures advisers licence, it will not permit any natural person to sell or otherwise supply or provide the services described in paragraph 2.2(a) to members of the public unless it has appointed that person as a representative of Freehold International under section 1150 of the Corporations Act.

2.3. Optioneer Systems undertakes that:

- (a) it will not sell or otherwise supply or provide:
 - (i) the Optioneer system (other than the historical data) or any other computer hardware or software that has or is represented to have the functions or capabilities in paragraph 1.2(a); or
 - (ii) the Other Services or any of them,to members of the public until such time as it holds a futures advisers licence or is otherwise authorised in accordance with the Corporations Act.

3. Acknowledgments

- 3.1. Freehold International and Optioneer Systems each acknowledge that they have had the opportunity to obtain legal advice in relation to the content and effect of this enforceable undertaking.
- 3.2. Freehold International and Optioneer Systems each acknowledge that ASIC:
- (a) may issue a media release on or at any time after the execution of this enforceable undertaking referring to such terms that ASIC determines and which led to the execution of this enforceable undertaking;
 - (b) will make this enforceable undertaking available for public inspection; and
 - (c) may from time to time publicly refer to this enforceable undertaking.
- 3.3. Freehold International and Optioneer Systems each acknowledge that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.

- 3.4. Freehold International and Optioneer Systems each acknowledge 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.
- 3.5. Freehold International and Optioneer Systems each further acknowledge that entering into this enforceable undertaking has no operative force until accepted by ASIC.

**EXECUTED by FREEHOLD)
INTERNATIONAL PTY LTD by)
two of its directors in accordance)
with section 127 of the)
Corporations Act:)**



Signature

COLIN SMITH

Full Name

DIRECTOR

Position Held



Signature


JUDITH KYNETTE SMITH

Full Name

DIRECTOR

Position Held

**EXECUTED by OPTIONEER)
SYSTEMS PTY LTD by its sole)
director in accordance with section)
127 of the Corporations Act:)**



Signature


ANDREW. M. EVANS

Full Name of Sole Director

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:

Signed by:


A.J. ORCHARD 14/2/02
DIRECTOR ENFORCEMENT (SW)

"Attachment A"

Dear Client,

"Optioneer"

I am writing to you about the Optioneer ("**Optioneer**") computer system (comprising hardware and software) lent to you and training and educational services and historical data ("the other services") sold to you by Freehold International Pty Limited in [month] [year].

Following an investigation by the Australian Securities and Investments Commission ("**ASIC**") into the distribution of Optioneer and the other services by Freehold International, ASIC formed the opinion that Freehold International were carrying on a futures advice business without holding a futures advisers licence as required by the Corporations Act 2001.

Freehold International acknowledges ASIC's concerns but it does not believe it was carrying on a futures advice business.

Freehold International made an enforceable undertaking to ASIC to stop distributing Optioneer and providing the other services related to the lending of Optioneer until it holds an appropriate licence.

On 3 December 2001 Freehold International applied to ASIC for a futures advisers licence which was refused.

Freehold International also undertook to inform you that, as a result of Freehold International supplying you Optioneer and the other services when it did not have a licence, you may have certain rights to rescind agreements you made with Freehold International concerning Optioneer under section 1164 of the Corporations Act 2001. You should consult a lawyer about this.

Yours sincerely,

Colin Smith
Director Freehold International Pty Limited