

AUSTRALIAN SECURITIES
& INVESTMENTS COMMISSION

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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:

Andrew John Lloyd

113 Woodville Road,

WOODVILLE. SA. 5011.

1. Background

- 1.1. Andrew John Lloyd ('Mr. Lloyd') was the holder of a proper authority from Professional Investment Services Pty. Ltd. ('PIS') a Licensed Dealer in Securities from March 1995 to February 2002. Prior to that he had held proper authorities since 1990.
- 1.2. In December 2001, the Australian Securities and Investment Commission ('ASIC') received a complaint from a client of Mr Lloyd.
- 1.3. In about July 1999, the client had received a compensation payout and Mr. Lloyd had advised his client to invest the bulk of his payout, \$500,000, in insurance based products, which he did.
- 1.4. In about January 2000, Mr Lloyd approached this client to become involved in the purchase of licensing agreements for a novel concrete construction method from the Licensor of the product.

- 1.5. Mr Lloyd requested \$50,000 from the client as a deposit, though only \$40,000 was required by the Licensor and Mr Lloyd retained the balance in his own account.
- 1.6. Mr. Lloyd intended at this stage to be personally involved in the securing of the license agreements and in the setting up and running of the operational entity for the licenses.
- 1.7. Mr. Lloyd undertook to find additional investors to meet the milestone payments to the Licensor necessary to secure the licenses.
- 1.8. Mr Lloyd failed to secure any additional investors and as a critical milestone payment drew closer he drew a personal cheque for \$250,000 payable to the Licensor, which cheque was subsequently dishonoured.
- 1.9. The client then withdrew funds from his insurance-based investments and arranged a temporary bank overdraft to meet the milestone obligations.
- 1.10. The client incurred a \$5,500 penalty for early withdrawal from the investments.
- 1.11. Mr. Lloyd received legal advice around the end of April 2000 that he would create a conflict of interest by becoming involved with the operational entity of the licenses. He then withdrew from any formal involvement with the company. The company was eventually liquidated and the client crystallized a \$510,000 loss.
- 1.12. The client tried unsuccessfully to obtain from Lloyd a breakdown of the \$10,000 retained from deposit funds.
- 1.13. In the course of ASIC's enquiries, Mr Lloyd produced client files to ASIC, an analysis of which indicate a number of concerns about investment advice and compliance issues including:
 - inadequate risk assessment of investment products;
 - inadequate matching of client risk profile with product risk;
 - inadequately documented authorisations for action on portfolios;
 - inadequately documented advice on commissions or benefits.

2. Concerns of ASIC

- 2.1. In contravention of s 851 of the Corporations Law, Mr. Lloyd, in his capacity as the client's investment adviser, failed to adequately consider the investment needs, and risk profile, of the client when he withdrew his funds from insurance based investments.
- 2.2. Mr. Lloyd failed to advise the client, either expressly or by implication, that there was an inherent risk of moving his funds from insurance-based investment products, that were a relatively stable investment, to an untested and speculative investment venture.

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- 2.3. Mr. Lloyd either misrepresented or failed to disclose to the client that the deposit required to secure the license for South Australia was only \$40,000 not \$50,000.
- 2.4. Mr. Lloyd withheld the \$10,000 in his own account, without authority. Although he subsequently characterised the \$10,000 as expenses incurred in the initial setting up of the operational entity, he could only provide expense receipts for \$2,000. Upon being pressed for an explanation, he indicated a fee structure for his services that was never disclosed to his clients.
- 2.5. Mr. Lloyd issued a personal cheque for \$250,000 although he had no arrangements in place with the bank to have it honoured. His balance in the account at the time of issuing the cheque was less than \$1,500.
- 2.6. Mr Lloyd placed himself in a position of conflict by becoming involved in a venture which had a significant financial exposure and then having advised his client to withdraw from a low risk investment and enter the high risk venture.
- 2.7. Further, Mr. Lloyd became involved in the venture with his client and failed to identify his conflict of interest that existed because of his position as a financial adviser. After he formally removed himself from investment in the venture he nevertheless remained active as an adviser in the business dealings.
- 2.8. Mr. Lloyd's client files indicates multiple and repetitive compliance breaches.
- 2.9. As a result of these matters ASIC has reason to believe that he has not performed and will not perform efficiently, honestly and fairly the duties of a representative of a securities dealer and/or an investment advisor.

3. Acknowledgement of ASIC's Concerns

- 3.1. ASIC has the power 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 offer the commitments in this undertaking as an alternative to ASIC exercising its powers, Mr Lloyd acknowledges ASIC's concerns set out in paragraph 2 above.

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4. Undertakings

Pursuant to section 93AA of the Australian Securities and Investments Commission Act ('ASIC Act'), Mr. Lloyd undertakes that:

- 4.1. He will not for a period of 24 months commencing 15 March 2002 and concluding on 15 September 2004 (the 'said period'):
 - 4.1.1. Do any act or engage in any conduct as a representative of a securities dealer, an investment adviser, a futures broker, a futures adviser, or a securities representative or futures representative including holding himself out to be such a representative.
 - 4.1.2. Apply to ASIC for an Australian Financial Services Licence ("AFSL");
 - 4.1.3. Apply to a holder of an AFSL to become a representative of such a licence holder;
 - 4.1.4. Do an act for which an AFSL or an authorisation from an AFSL holder is or would be required by law.
- 4.2. If, after expiration of the said period, he seeks to apply to ASIC to be a holder of an AFSL or to a holder of an AFSL to become a representative of the licence holder, he will not, on the basis of experience, seek a variation or modification of the educational requirements to meet training standards to become a licensee or a representative.

5. Acknowledgements

- 5.1. Mr Lloyd acknowledges that:
 - 5.1.1. 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;
 - 5.1.2. ASIC may from time to time publicly refer to this undertaking; and
 - 5.1.3. ASIC will make this undertaking available for public inspection.
- 5.2. Mr Lloyd 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 Lloyd 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.

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

SIGNED by: *A.J. Lloyd*

Andrew John Lloyd

This 14th day of March, 2002

In the presence of:

MICHAEL LONG

Witness:

Michael Long

Name: (print)

8th floor, 100 Pirie Street, Adelaide, 5000

Address:

This 14th day of March 2002

ACCEPTED BY the Australian)
Securities & Investments)
Commission pursuant to the)
ASIC Act 2002 section 93AA by its)
duly authorised delegate)

K. J. Axford

Karen Axford

Regional Commissioner South Australia,

Australian Securities and Investments Commission

This 14th day of March 2002

5 *A.J. Lloyd*