



ASIC

Australian Securities & Investments Commission

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93A Australian Securities & Investments Commission Act 2001

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

Matthew Johannes Lamens

10 Dudley Rd

Rose Bay NSW 2029

1. Background

- 1.1 Mr Matthew Johannes Lamens (Mr Lamens) was, at all material times, a futures representative with L Quay Futures Brokers Pty Ltd (L Quay) and was the holder of a proper authority.
- 1.2 ASIC received information in relation to suspected contraventions of the NSW Crimes Act and the Corporations Law in respect of trading on the account of Mr Michael Browne (Mr. Browne), a client of L Quay, by Mr Lamens.
- 1.3 ASIC is concerned that:
 - (a) in September 2000 Mr Lamens altered the client records of L Quay in respect of the account of Mr Browne (the Browne account) by changing the postal address of the Browne account with L Quay to the post office box of Mr Lamens' wife, being PO Box 912 Double Bay;

- (b) between 1 September 2000 and 30 September 2000 Mr Lamens traded on the Browne account on a number of occasions without Mr Brown's authorisation for his own financial benefit;
- (c) the contracts traded by Mr Lamens on the Browne account were Futures contracts which are based on underlying securities;
- (d) on 7 September 2000 Mr Lamens withdrew funds from the Browne account (which were the result of unauthorised trading on this account by Mr Lamens) in the amount of \$3,400 by requesting a cheque from the L Quay back office. Mr Lamens deposited the cheque for \$3,400 into his own share trading account and used the funds for his own purposes. This was done without the authority of Mr Browne;
- (e) on 15 September 2000 Mr Lamens withdrew funds from the Browne account (which were the result of unauthorised trading on this account by Mr Lamens) in the amount of \$500 by requesting cash from the L Quay back office. Mr Lamens used the \$500 for his own purposes. This was done without the authority of Mr Browne;
- (f) as a result of unauthorised trading on the Browne account during September 2000, losses totalling \$7,254.81 were incurred by Mr Lamens. In September 2000 Mr Lamens transferred those losses to his error account with L Quay; and
- (g) at the time of the conduct in sub-paragraphs (a), (b), (d), (e) and (f) above:
 - (i) Mr Lamens had no authority to alter the client account records of L Quay in respect of the mailing address of Mr Browne;
 - (ii) Mr Lamens had no authority to trade on the Browne account;
 - (iii) Mr Lamens had no authority to withdraw funds from the Browne account; and
 - (iv) Mr Lamens had no authority to transfer losses incurred as a result of the unauthorised trading on the Browne account into his L Quay error account.

1.5 On or about 14 March 2001 the Sydney Futures Exchange (SFE) fined Mr Lamens \$10,000 and suspended him from being concerned in the futures business of any Participant until 14 March 2003 for contravening the SFE's Business Rules in respect of his conduct regarding the Browne account.

2. Concerns of ASIC

SFE referred the above matters to ASIC, which determined to conduct an investigation into Mr Lamens' activities. As a result of that investigation, ASIC has reasons to suspect that Mr Lamens:

- (a) has contravened S178BA of the Crimes Act NSW;
- (b) has contravened S1264 of the Corporations Act;
- (c) has contravened S1271 of the Corporations Act;

- (d) did not perform the duties of a futures representative efficiently, honestly and fairly;
- (e) will not in the future perform the duties of a futures representative efficiently, honestly and fairly; and
- (f) will not perform efficiently, honestly and fairly the duties of a representative of a securities dealer or an investment advisor.

3. Acknowledgement of ASIC's Concerns

- 3.1 ASIC has the power pursuant to section 1193 of the Corporations Act to make a banning order against a natural person.
- 3.2 Section 1194 of the Corporations Act provides that ASIC, after complying with section 1200(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 futures broker; and/or
 - (b) a representative of a futures advisor.
- 3.3 ASIC also has the power pursuant to section 829 of the Corporations Act to make a banning order against a natural person.
- 3.4 Section 830 of the Corporations 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.
- 3.5 In agreeing to offer the commitments in this undertaking Mr Lamens acknowledges ASIC's concerns set out in paragraph 2 above.

4. Undertakings

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

- 4.1 He will not for a period of 3 years commencing from the date of this undertaking:
 - 4.1.1 Do any act or engage in any conduct as a representative of a futures broker, a futures advisor, securities dealer, an investment adviser or hold 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 Mr Lamens intends to re-enter the futures/securities industry, before the expiration of the period referred to in paragraph 4.1, he will attend 80 percent of lectures, complete all course work and use his best efforts to achieve at least a passing grade in the Securities Industry Law and Ethics Course offered by the Securities Institute of Australia and provide certification of his result to the Director, Enforcement North/East at ASIC by 31 December 2004.
- 4.3 If, after the expiration of the period referred to in paragraph 4.1, he seeks to apply to ASIC to be a holder of an AFSL or to the holder of an AFSL to become a representative of the licence holder, he will not, on the basis of his prior 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 Lamens 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 Lamens 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 Lamens 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 Lamens acknowledges that this undertaking has no operative force until accepted by ASIC.

SIGNED by: *MJ Lamens*

Matthew Johannes Lamens

This 11 day of April 2002

In the presence of: *GR*

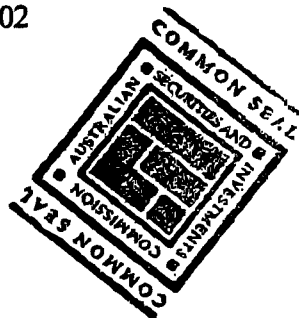
Witness:

GIL BARRON
Name: (print)

135 King St
Sydney
Address:

This day of This 2002

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



Allen Turton

Allen Turton

Director, Enforcement North/East

Australian Securities and Investments Commission

This 15th day of April 2002