

ENFORCEABLE UNDERTAKING

Section 93AA

Australian Securities and Investments Commission Act 2001

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

Damian Thomas Gill

of Flat 1, 68 Marine Parade, Elwood, Victoria.

1. **Background**

- 1.1. Damian Thomas Gill ('Gill') was a proper authority holder with Barton Capital Securities Pty Ltd ('Barton') from 3 May 1999 to 14 February 2001. During that time Barton was the holder of a dealers licence under the *Corporations Act 2001* (Cth) as then in force ('the Old Corporations Act').
- 1.2. ASIC has undertaken an investigation in relation to suspected contraventions of the Corporations Act by Gill between May 1999 and February 2001.
- 1.3. ASIC's investigation has revealed that between May 1999 and February 2001 Gill, on his own account and without authorisation from Gerard Morgan:
 - (a) Completed an Account Application Form in the name of Gerard Morgan for the purposes of opening a client account with Barton in the name of Gerard Morgan;
 - (b) Signed the Account Application Form in the name of Gerard Morgan;
 - (c) Completed a Barton Sponsorship Agreement in the name of Gerard Morgan;
 - (d) Signed the Sponsorship Agreement in the name of Gerard Morgan;
 - (e) Submitted both the Account Application Form and Sponsorship Agreement to Barton intending that Barton rely upon them as being genuine documents;
 - (f) Bought and sold securities through the account opened in the name of Gerard Morgan ('the Morgan account') on a regular basis;
 - (g) Drafted five letters purporting to be from Gerard Morgan to Gill requesting the withdrawal of funds from the Morgan account;
 - (h) Signed each of the letters referred to in paragraph 1.3(g) in the name of Gerard Morgan;
 - (i) Submitted each of the letters referred to in paragraph 1.3(g) to Barton intending that Barton rely upon them as being genuine documents;

- (j) Failed to include in his register of relevant interests the securities purchased by him through the Morgan account.
- 1.4. As a result of the matters outlined in paragraph 1.3, ASIC has reason to believe that Gill has:
- (a) Not performed the duties of a securities representative efficiently, honestly and fairly; and
 - (b) Contravened a securities law, namely section 881 of the Corporations Act.
- 1.5. Pursuant to sections 829 and 830 of the Old Corporations Act ASIC has the power to make an order banning a person from being a representative of a dealer or an investment adviser either permanently or for a specified period where the person fails to perform efficiently, honestly and fairly the duties of a representative of a dealer or an investment adviser or where the person contravenes a securities law.
- 1.6. On 13 November 2001 a delegate of ASIC made a decision banning Gill from performing any act as a representative of a dealer or an investment adviser until 13 November 2003.
- 1.7. On 14 November 2001 Gill applied to the Administrative Appeals Tribunal for review of ASIC's decision of 13 November 2001. Gill's application to the Administrative Appeals Tribunal was allocated proceeding number V2001/1460.
- 1.8. ASIC has agreed to accept the undertakings offered by Gill in paragraph 2 of this Enforceable Undertaking as an alternative to relying on its decision of 13 November 2001.
- 1.9. In agreeing to perform the undertakings outlined in this Enforceable Undertaking Gill acknowledges that he has not adequately performed his duties as a representative of a dealer.

2. Undertakings

- 2.1. Gill undertakes that until 13 February 2003 he will not:
- (a) Perform any act as a representative of a securities dealer or as a representative of an investment adviser;
 - (b) Provide investment advice to any person;
 - (c) Deal in securities;
 - (d) Apply to the holder of a securities dealers licence or of an investment advisers licence to become a representative of such a licence holder;
 - (e) Apply to ASIC for a dealers licence or an investment advisers licence;
 - (f) Apply to ASIC for an Australian Financial Services Licence ('AFSL');


- (g) Apply to the holder of an AFSL to become a representative of such a licence holder;
 - (h) Perform any act for which an AFSL or authorisation from an AFSL holder is or would be required by law;
- 2.2. Gill undertakes that from 14 February 2003 until 13 November 2003 he will not:
- (a) Perform any act as a representative of a dealer or an investment adviser unless he holds a proper authority from Terrain Securities Pty Ltd ACN 008 082 157 ('Terrain'), a licensed dealer under the Corporations Act;
 - (b) Apply to the holder of a securities dealers licence or an investment advisers licence, other than Terrain, to become a representative of such a licence holder;
 - (c) Apply to ASIC for a dealers licence or an investment advisers licence;
 - (d) Apply to ASIC for an Australian Financial Services Licence ('AFSL');
 - (e) Apply to the holder of an AFSL, other than Terrain, to become a representative of such a licence holder;
 - (f) Perform any act for which an AFSL or an authorisation from an AFSL holder is or would be required by law, other than as an authorised representative of Terrain.
- 2.3. Gill undertakes that from 14 February 2003 to 13 November 2003 he will not submit any Account Application Forms to Terrain without also enclosing with each Account Application Form documentary proof of the identity of the client.
- 2.4. Gill undertakes that from 14 February 2003 to 13 November 2003 he will not open any client accounts with Terrain without obtaining specific authorisation from Terrain to do so.
- 2.5. Gill undertakes that from 14 February 2003 to 13 November 2003 he will comply with all requirements imposed upon him by Terrain in relation to the management of client accounts.
- 2.6. Gill undertakes that before performing any acts described in paragraph 2.2(a) above he will:
- (a) Enrol in and satisfactorily complete the Securities Industry Law and Ethics Course offered by the Securities Institution of Australia; and
 - (b) Provide ASIC with proof of his satisfactory completion of that course.
- 2.7. Gill undertakes that within seven days of the date of this Enforceable Undertaking he will withdraw his application to the Administrative Appeals Tribunal, being application number V2001/1460, for review of the decision made by Mr Colin Grant, Delegate of the Australian Securities and Investments Commission, dated 13 November 2001 ('the Application'), on the understanding

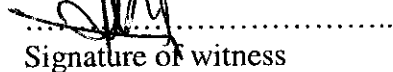
and in consideration of ASIC's agreement to revoke the said decision of 13 November 2001 once ASIC has received notification that Gill has withdrawn the Application.

- 2.8. Gill undertakes that he will not at any time make any kind of application to reinstitute Administrative Appeals Tribunal proceedings V2001/1460 and that he will not commence any other proceedings, either by way of judicial review or otherwise, in relation to the decision made by Colin Grant dated 13 November 2001, on the understanding and in consideration of ASIC's agreement to revoke the said decision of 13 November 2001 once ASIC has received notification that Gill has withdrawn the Application.

3. Acknowledgments

- 3.1. Gill acknowledges that he has had the opportunity to obtain legal advice in relation to the content and effect of this enforceable undertaking.
- 3.2. Gill acknowledges that ASIC:
- (a) may issue a media release on or at any time after the execution of this enforceable undertaking referring to its terms and the concerns of ASIC 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. Gill acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges to seek a pecuniary penalty order.
- 3.4. Gill acknowledges 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. Gill further acknowledges that entering into this enforceable undertaking has no operative force until accepted by ASIC.

Signed by Damian Thomas Gill: 


In the presence of: 

Signature of witness
ALISON MANN
Name of witness

152 KING ST EAST DONCASTER
Address of witness VIC 3109

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:

Dated this 22nd day of May 2002



A Orchard

Director, Enforcement South West