



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:

Timothy Myles Austin

4/7 Terry Rd

WEST RYDE NSW 2118

1. Background

1.1 Mr Timothy Myles Austin ("Mr Austin") was, at all material times employed by Williamson Chaseling Austin Financial Planning Services Pty Ltd as trustee for the WCA Unit Trust to provide services as the holder of a proper authority issued by Novatax Pty Ltd.

1.2 ASIC received information in relation to:

- (a) suspected contraventions by Mr Austin of the NSW Crimes Act and the Corporations Act in respect of dealings in relation to two client accounts; and
- (b) suspected contraventions by Mr Austin of the Corporations Act in relation to information provided to clients by Mr Austin regarding their financial position.

1.3 ASIC is concerned that:

- (a) between July 2001 and January 2002, Mr Austin transferred funds, to the value of approximately \$600,000 from a client's account into his Cititaw Pty Ltd account (of which Mr Austin is the sole director and secretary) without authority;
- (b) Mr Austin made use of the funds transferred to the Cititaw account, referred to in paragraph (a) above without authority to do so. An arrangement for full restitution has been made between Mr Austin and this client;
- (c) between 17 December 2001 and 14 January 2002 Mr Austin transferred funds, to the value of \$353,000, from one client's account to another client's account without authority to do so. The second client, without knowledge of the wrongful transfer of monies, proceeded to use them for that client's own purposes. These monies were repaid in full on 23rd February 2002 by monies lent to Mr Austin from a third party; and
- (d) between June 2001 and January 2002 Mr Austin provided misleading financial reports to approximately 12 clients of Novatax Pty Limited;

1.4 Mr Austin voluntarily resigned his proper authority on 1 February 2002.

2. Concerns of ASIC

As a result of information that was provided to it regarding Mr Austin's conduct, ASIC has reason to suspect that Mr Austin:

- (a) has contravened s178A of the Crimes Act NSW;
- (b) has contravened s178BA of the Crimes Act NSW;
- (c) has contravened s995 of the Corporations Act;
- (d) has contravened s999 of the Corporations Act;
- (e) did not perform the duties of a securities representative efficiently, honestly and fairly; and
- (f) will not in the future perform the duties of a securities representative efficiently, honestly and fairly.

3. Acknowledgment of ASIC's Concerns

3.1 ASIC has the power pursuant to section 829 of the Corporations Act to make a banning order against a natural person.

3.2 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.

3.3 In agreeing to offer the commitments in this undertaking Mr Austin 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 Austin undertakes that:

4.1 He will not, commencing from the date of this undertaking:

4.1.1 Do any act or engage in any conduct for which he would be required to be a representative of a securities dealer or an investment adviser at the date of this undertaking, or hold himself out to be such a representative;

4.1.2 Apply to ASIC for an Australian Financial Services Licence ("AFSL") in order to perform functions for which, as at the date of this undertaking, he would be required to hold an AFSL;

4.1.3 Apply to a holder of an AFSL to become a representative of such a licence holder in order to perform functions for which he would be required to become such a representative as at the date of this undertaking; and

4.1.4 Do an act for which an AFSL or an authorisation from an AFSL holder is currently required by law.

5. Acknowledgements

5.1 Mr Austin acknowledges that:

5.1.1 On execution of this undertaking, ASIC may issue a media release, referring to this enforceable undertaking;

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 Austin 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, or arising from any other conduct.

5.3 Mr Austin acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention or pursue criminal prosecution, or its power to lay charges or to institute civil proceedings including civil penalty proceedings.

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

SIGNED by: Timothy Myles Austin

Timothy Myles Austin

This 8th day of August 2002

In the presence of:

Jane Pangakolan
Witness:

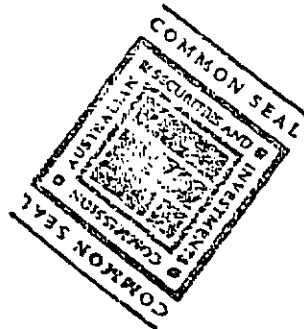
JANE PANGAKOLAN
Name: (print)

Lvl 15, 1 Martin Place Sydney

Address:

This 8th day of August 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 8th day of August 2002