

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:

Andrew William Donald ("Mr Donald")
36 Grenville Street
HAMPTON VIC 3188



1. Background

1.1 At all material times;

- (a) Mr Donald was employed by ABN AMRO Equities Australia Limited ("ABN AMRO");
- (b) ABN AMRO was a licensed securities dealer who purchased and sold securities for its clients;
- (c) Mr Donald held a proper authority as a representative of ABN AMRO; and
- (b) Mr Donald had responsibilities arranging the purchase and sale of securities for clients of ABN AMRO.

1.2 On 29 May 1998, Mr Donald received instructions from National Australia Asset Management ("NAAM") to place an order for the purchase of shares in Burswood Limited ("Burswood"), a publicly listed company on the Australian Stock Exchange Ltd (ASX). Amongst other things, Mr Donald caused a purchase order for shares in Burswood to be placed on the ASX Automated Trading System at a price of 95 cents per share. This price was 6.8% above the price previously reached by Burswood shares on that day. The closing price of shares on that day was 95 cents per share ("the Burswood transaction").

1.3 As a result of Mr Donald's conduct in relation to the Burswood transaction, a Banning Order was made by ASIC on 20 July 1999 pursuant to section 829 of the Corporations Law ("the Law"). The Banning Order prohibited Mr Donald from doing an act as a representative of a dealer or an investment adviser for a period of 4 years from the date of service of the Banning Order on Mr Donald. The Banning Order was made as ASIC found that through Mr Donald's conduct in relation to the Burswood transaction:

- (a) he had contravened subsection 998(1) of the Law;
- (b) he had not performed efficiently, honestly and fairly the duties of a representative of a dealer;
- (c) he will not perform efficiently, honestly and fairly the duties of a representative of a dealer; and

- (d) it was for the public benefit that a banning order be made against Mr Donald.
- 1.4 On 5 August 1999, Mr Donald applied to the Administrative Appeals Tribunal ("AAT") for review of the decision of ASIC made on 20 July 1999. On 21 January 2000, the AAT:
- (a) found that Mr Donald had breached subsection 998(1) of the Law; and
 - (b) varied the decision of ASIC by reducing the Banning Order to a period of 2 years from 20 July 1999.
- 1.5 On 10 October 2000, his Honour Justice Heerey of the Federal Court allowed Mr Donald's appeal against the decision of the AAT made on 21 January 2000, and remitted the matter to the AAT for rehearing according to law.
- 1.6 On 22 November 2000, the AAT granted a stay of the banning order.
- 1.7 On 21 June 2001, the AAT:
- (a) found that Mr Donald's conduct in relation to the Burswood transaction was in breach of s 998(1) of the Law;
 - (a) set aside the decision of ASIC made on 20 July 1999; and
 - (b) substituted a decision that:
 - A. A Banning Order be made prohibiting Mr Donald from doing any act as a dealer's representative from 20 July 1999 until 22 November 2000; and
 - B. ASIC accept a written undertaking to the following effect:
 - (i) enrol in and complete the Business and Finance Practice Industry and/or the Financial Markets Law, Regulation and Compliance courses offered by the Securities Institute;
 - (ii) co-operate with Australian Securities Exchange and the Respondent in the preparation and presentation of seminars which will consider issues of law, practice and procedure relevant to acting as a Designated Trading Representative;
 - (iii) undertake for a period of three and a half years from the date of the undertaking not to create, or do anything that is likely to create, a false or misleading appearance of active trading in any securities on a stock market or a false or misleading appearance with respect to the market for, or the price of, any securities; and

- (iv) during the term of the undertaking, give a copy of the undertaking to all licensed dealers by whom he is employed.

- 1.8 In December 2001, Mr Donald completed the Business and Finance Practice course offered by the Securities Institute;
- 1.9 On 23 December 2003, ASIC's appeal against the decision of the AAT of 21 June 2001 was dismissed by the Full Court of the Federal Court.

2. Undertakings

- 2.1. In accordance with the decision of the AAT dated 21 June 2001, ASIC is obliged to accept the following enforceable undertakings made by Mr Donald pursuant to section 93AA of the ASIC Act.

- 2.2 Mr Donald undertakes:

- (a) to co-operate with the ASX and ASIC in the preparation and presentation of seminars which will consider issues of law, practice and procedure relevant to acting as a Designated Trading Representative;

- (b) to not create, or to do anything that is likely to create, a false or misleading appearance:

- A. of active trading in any securities on a stock market; or

- B. with respect to the market for, or the price of, any securities on a stock market;

for a period of three and a half years from 21 June 2001; and

- (c) to give a copy of this undertaking to all licensed dealers by whom he is employed during the period of three and a half years from 21 June 2001.

3. Acknowledgments

- 3.1 Mr Donald acknowledges:

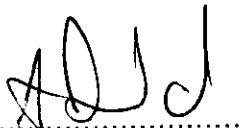
- (a) That ASIC may issue a media release on execution of this enforceable undertaking, referring to its terms, to the decision of the AAT of 21 June 2001, and to the conduct of Mr Donald referred to in the decision of 21 June 2001.

- (b) That ASIC may from time to time publicly refer to this enforceable undertaking;

- (c) That ASIC will make this enforceable undertaking available for public inspection and may enter Mr Donald's name onto a register maintained by ASIC;

- (d) That this enforceable undertaking in no way derogates from the rights and remedies available to any person, including ASIC, relating to or arising from any conduct referred to in this enforceable undertaking;


- (e) That ASIC's acceptance of this enforceable undertaking does not affect ASIC's powers to investigate a suspected contravention of any of the matters referred to in section 13 of the ASIC Act and which arise from any past or future conduct of Mr Donald. Nor does acceptance of this enforceable undertaking restrain ASIC from exercising any other powers that have been conferred on it; and
- (f) That this enforceable undertaking has no operative force until it is accepted by ASIC. The signature of the authorised delegate will be evidence of such acceptance. The date of signing, as marked by the authorised delegate, will be the date on which this enforceable undertaking comes into effect.

Signed by: 
 (Mr Andrew William Donald)

This 14th day of April 2004

At: MELBOURNE


In the presence of:


 Witness

RAELENE ANN MURLEY
 Name (print)

14 MCKEON AVENUE
 Address PASCOE VALE SOUTH 3044.

ACCEPTED by the Australian)
 Securities and Investments)
 Commission pursuant to)
 section 93AA of the ASIC Act)
 by its duly authorised delegate.)



This 22nd day of April 2004