

Schedule G

**ENFORCEABLE UNDERTAKING
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (Cth)**

Section 93AA

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

**Mr John Duggan trading as Forex Pacific
1592 Wooli Road
PILLAR VALLEY NSW 2462**



1. Background at 26 March 2004

- 1.1 Mr John Duggan ("**Mr Duggan**") trades under the business name Forex Pacific. Forex Pacific was registered as a business name on 14 May 2003.
- 1.2 At all relevant times Mr Duggan did not hold an Australian Financial Services Licence ("**AFSL**") under the Corporations Act 2001 ("**the Act**").
- 1.3 On 12 February 2004 Mr Duggan lodged an application with ASIC for an AFSL. At this time the application has not been finalised.
- 1.4 Mr John Duggan trading as Forex Pacific advertises in newspapers and magazines for members of the public to attend free introductory seminars on foreign exchange currency markets.
- 1.5 Mr Duggan invites members of the public attending the free seminars to complete a trading workshop. The cost of the workshop is approximately \$2,200.
- 1.6 The trading workshops are offered through seminars and over the Internet and aim to prepare participants to trade the foreign exchange market.
- 1.7 The Forex Pacific website contains a chat room that is only accessible to Mr Duggan's clients who have password access. Mr Duggan and Mr Duggan's Representatives regularly participate in trading discussions in the chat room.
- 1.8 During seminars, workshops and chat room sessions, Mr Duggan or his subcontractors, agents, employees or representatives ("**Mr Duggan's Representatives**") make certain recommendations, or express statements of opinion, about foreign exchange trading to clients. These include statements such as:

- (a) *"we recommend an equity ratio of 10% of an account at any one time";*

- (b) *"we recommend to put in a "stop loss" on [the client's] trade at any time to limit [the client's] losses";*
 - (c) *"we strongly recommend never using a risk to reward ratio of 1:2;*
 - (d) *"we recommend our trading methodologies be followed"; and*
 - (e) *"we always strongly recommend entering the market live and await for confirmation of your trading point."*
-

- 1.9 Through the trading workshops, seminars and chat room sessions, Mr Duggan and Mr Duggan's Representatives introduce participants to a U.S. based company Forex Capital Markets LLC ("the Dealer") that deals in over the counter forward and spot foreign currency and foreign currency options contracts. The Dealer is registered as a futures commission merchant with the U.S. Commodity Futures Trading Commission and is a member of the U.S. National Futures Association. The Dealer does not hold an AFSL.
- 1.10 The relationship between the Dealer and Mr Duggan is set out in an agreement dated 20 June 2003 ("Agreement").
- 1.11 The terms of the Agreement provide that, in consideration for introducing clients to the Dealer, the Dealer rebates a referral fee to Mr Duggan for each foreign currency trade that a client transacts using the Dealer as the trading platform.
- 1.12 The referral fee rebate is calculated as a percentage of a "pip" for each lot or contract traded in major foreign currencies set out in the Agreement. Mr Duggan advises ASIC that a pip has a value between US\$0.50 cents and US\$5.00, depending on which trading platform the client trades.
- 1.13 Also set out in the Agreement, Mr Duggan has various obligations to the Dealer including, but not limited to the following:
- (a) determining whether a prospective client is qualified to the Dealer's standards to engage in Foreign Exchange trading including the prospective client's credit, market knowledge and experience in foreign exchange trading;
 - (b) providing all relevant information to the Dealer with respect to Mr Duggan's assessment of the qualifications of each client;
 - (c) ensuring that he does not solicit inappropriate clients or accept clients who Mr Duggan is aware are involved in illegal activity;
 - (d) notifying the Dealer of any wrong doing or accusations of wrong doing of clients;

- (e) ensuring that Mr Duggan does not promise services to clients that are not offered by the Dealer;
 - (f) ensuring that Mr Duggan does not down play risks relating to foreign exchange trading; and
 - (g) honestly representing the Dealer's services; and
-
- (h) ensuring to the best of Mr Duggan's ability that clients have read and fully understand the Dealer's contract and risk disclaimers.

1.14 Mr Duggan uses the software and materials of the Dealer in trading workshops and trains his clients to use the Trading Platform Software of the Dealer. Mr Duggan also provides clients with an 'FX Trading Station User Guide' ("**The Guide**"). The Guide outlines the process involved in conducting a market trade and defines essential trading terms.

1.15 Mr Duggan provides a booklet entitled 'The Forex Pacific Study Guide' to all participants of the trading workshops. The following observations can be made:

- (a) the Dealer is identified as the 'preferred broker' of Forex Pacific;
- (b) the credentials of the Dealer are described in detail including size, liquidity, market position and regulatory arrangements under the heading of 'why we use them';
- (c) Forex Pacific recommends the foreign exchange trading charts of the Dealer; and
- (d) the client is directed to forward a completed application form to Mr Duggan to arrange to open a live trading account with the US based Dealer.

1.16 Through a link on the Forex Pacific website clients, may access the website of the Dealer and Dealer software and materials. A client may also open a live trading account with the Dealer from the Forex Pacific website.

1.17 ASIC has reviewed the Agreement, website materials, and various other documents and is of the view that Mr Duggan arranges for clients to deal in financial products and provides financial product advice in contravention of the Act.

1.18 Mr Duggan has offered and ASIC has agreed to accept this Enforceable Undertaking as an alternative to determining whether Mr Duggan, by himself or through his subcontractors, agents, employees or representatives, is engaging in conduct in contravention of the Act.

2. Concerns of ASIC

2.1 ASIC has concerns that Mr Duggan:

- (a) may have engaged in conduct in contravention of section 911A of the Act by arranging for persons to deal in financial products under the Agreement in the absence of holding an AFSL or being an authorised representative under an AFSL;**

- (b) by himself or through Mr Duggan's Representatives, may have engaged in conduct in contravention of section 911A of the Act by providing financial product advice over the Internet in Forex Pacific chat rooms and during seminars and workshops in the absence of holding an AFSL or being an authorised representative under an AFSL; and**
- (c) by himself or through Mr Duggan's Representatives, may have engaged in conduct in contravention of section 911B of the Act by providing financial services on behalf of the Dealer when the Dealer does not hold an AFSL.**

3. Undertakings

Pursuant to section 93AA of the ASIC Act, Mr Duggan offers the following undertakings to ASIC:

- 3.1 Mr Duggan will not engage in conduct in contravention of section 911A of the Act by arranging for persons to deal in financial products in the absence of holding an AFSL or being an authorised representative of an AFSL holder;**
- 3.2 Mr Duggan will not engage in conduct by himself or through his subcontractors, agents, employees or representatives in contravention of section 911A of the Act by providing financial product advice over the Internet in Forex Pacific chat rooms and during seminars and workshops in the absence of holding an AFSL or being an authorised representative under an AFSL;**
- 3.3 Mr Duggan will not engage in conduct by himself or through his subcontractors, agents, employees or representatives in contravention of section 911B by providing financial services on behalf of another person or entity when that person or entity does not hold an AFSL;**
- 3.4 Mr Duggan, within 20 business days from the date of this Enforceable Undertaking, will provide ASIC with a copy of the following documents (if he has not done so already):**
 - (a) a termination notice, immediately terminating the Agreement between Mr Duggan and the Dealer pursuant to Clause 9 of the Agreement; and**

- (b) a notice from the Dealer confirming the termination of the Agreement and the date of from which termination of the Agreement becomes effective.

3.5 Mr Duggan, within 20 business days from the date of this Enforceable Undertaking, will (if he has not done so already):

- (a) advise all Mr Duggan's Representatives, including but not limited to Mr Mark Dansie and Mr Franc Manhatten, of a possible contravention of section 911B of the Act in a form acceptable to ASIC ("**subcontractor letter**");
- (b) provide evidence acceptable to ASIC confirming that the subcontractor letter has been sent to all Mr Duggan's Representatives including but not limited to those persons mentioned in paragraph 3.5(a); and
- (c) provide ASIC with the contact details (including the address, email address and telephone numbers) of all Mr Duggan's Representatives including but not limited to those persons mentioned in paragraph 3.5(a).

3.6 Mr Duggan, within 20 business days from the date of this Enforceable Undertaking, will advise all clients from whom Mr Duggan received or may receive a referral fee from the Dealer (if he has not done so already), that:

- (a) Mr Duggan is required to hold an AFSL or be an authorised representative under an AFSL to arrange for clients to deal in financial products;
- (b) the Dealer transfers a referral fee to Forex Pacific for each trade a client transacts through the Dealer, including details of the referral fee; and
- (c) Mr Duggan will refund to clients all referral fees he has received from the Dealer relating to client trades as outlined in the Enforceable Undertaking upon the request of his clients.

3.7 In relation to paragraph 3.6, Mr Duggan, within 20 business days from the date of this Enforceable Undertaking, will (if he has not done so already):

- (a) notify all clients from whom Mr Duggan received or may receive a referral fee from the Dealer in a form acceptable to ASIC ("**client letter**") by email and Australia Post;
- (b) post a copy of the client letter prominently on the home page of the Forex Pacific website and the Forex Pacific chat room for a period of 21 days;

- (c) provide ASIC with one weeks written notice of the date from which the client letter will be posted on the home page of the Forex Pacific website and chat room;
- (d) provide ASIC with proof of postage and email confirmation that the client letter has been sent to each client from whom Mr Duggan received or may receive a referral fee from the Dealer;

(e) provide ASIC with the contact details of all clients from whom Mr Duggan received or may receive a referral fee from the Dealer including address, email address and telephone numbers; and

(f) provide ASIC with the contact details of all clients to whom Mr Duggan refunds referral fees, and the amount of the refund as and when Mr Duggan refunds those referral fees.

3.8 Mr Duggan undertakes that, upon request, he will provide ASIC with all information in his possession, custody or control and all assistance he is reasonably able to provide in connection with, or arising out of any actions taken in connection with this Enforceable Undertaking.

4. Acknowledgments

4.1 Mr Duggan acknowledges ASIC's concerns set out in this Enforceable Undertaking.

4.2 Mr Duggan acknowledges that he has had the opportunity to obtain legal advice in relation to the content and effect of this Enforceable Undertaking.

4.3 Mr Duggan acknowledges that ASIC:

- (a) may issue a media release on execution of this Enforceable Undertaking referring to the terms of the Enforceable Undertaking and the concerns of ASIC which led to its execution;
- (b) may from time to time refer publicly to this Enforceable Undertaking; and
- (c) will make a copy of the executed Enforceable Undertaking available on a Public Register.

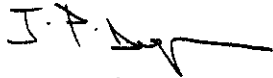
4.4 Further, Mr Duggan acknowledges that:

- (a) this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this Enforceable Undertaking;

- (b) ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's powers to investigate a contravention arising from past or future conduct whether it be conduct described in the Enforceable Undertaking or otherwise; and
- (c) the Enforceable Undertaking has no operative force until accepted by ASIC.

Executed by

MR JOHN DUGGAN TRADING AS FOREX PACIFIC

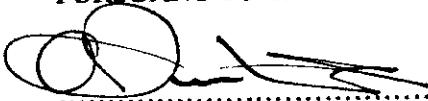


Principal

JOHN PATRICK DUGGAN

Print Name

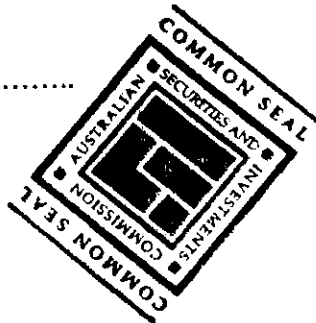
ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS DULY AUTHORISED DELEGATE



Allen Turton

Deputy Executive Director

Enforcement



Dated: 14th April 2004